

11 Am. Jur. 2d Bills and Notes VIII A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.


VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes  385 to 387, 388.1 to 392, 394 to 396, 399.1 to 402, 404(1) to 403, 405 to 407, 422, 422(1)

A.L.R. Library

A.L.R. Index, Acceptance


A.L.R. Index, Bills and Notes

A.L.R. Index, Checks and Drafts

A.L.R. Index, Collecting Banks

A.L.R. Index, Presentation or Presentment

A.L.R. Index, Uniform Commercial Code (UCC)

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A. Presentment

1. In General

§ 279. Presentment of negotiable instrument, generally

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  385 to 387

Forms

Forms relating to present of note for payment, see Am. Jur. Pleading and Practice Forms, Bills and Notes [[Westlaw®\(r\): Search Query](#)]

Forms relating to presentment, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw®\(r\) Search Query](#)]

Presentment is a demand for acceptance or payment of a negotiable instrument made by or on behalf of a person entitled to enforce the instrument.¹ No formal requirements or restrictions are imposed on the making of a presentment.² A mere demand for payment is sufficient as presentment, although the presenting party must demand immediate payment or acceptance.³

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Footnotes

¹ U.C.C. § 3-501(a)[Rev].
As to persons by whom presentment may be made, see § 290.
As to persons to whom presentment may be made, see § 291.

² Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:5 (3d ed.).

³ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:5 (3d ed.).

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A. Presentment

1. In General

§ 280. Presentment of drafts; presentment for payment versus acceptance

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  388.1, 394, 395, 399.1

A.L.R. Library

When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Banks: what is “documentary draft” under U.C.C. sec. 4-104(1)(f), 65 A.L.R.4th 1095

Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10

Forms

Forms relating to presentment, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw®\(r\) Search Query](#)]

Except when excused or waived,¹ presentment for payment is the presentment contemplated for most types of drafts, including—

— unaccepted checks presented to the payor bank other than for immediate payment over the counter.²

— unaccepted documentary drafts payable on demand.³

- other unaccepted drafts, payable on demand.⁴
- accepted drafts.⁵

Definition:

"Acceptance" means the drawee's signed agreement to pay a draft as presented.⁶ Acceptance and payment itself are discrete events,⁷ The two do not coincide, and payment is not acceptance.⁸

If a draft is payable on elapse of a period of time after sight or acceptance, presentment for acceptance is necessary in order to start the running of the time period. If a draft is payable on elapse of a period of time after sight or acceptance, presentment for acceptance is necessary in order to start the running of the time period.⁹ If the drawee does not accept such a draft upon presentment for acceptance, dishonor occurs on the day of presentment.¹⁰ Further, a draft payable on a date stated in the draft may be dishonored by nonacceptance or nonpayment.¹¹ If such a draft is presented for acceptance before the date payable but is not accepted, it is dishonored as of the date of its presentment for acceptance.¹² If a draft payable on a specified date is presented to the drawee for payment and payment is not made, the draft is dishonored as of the date of presentment or the date that the instrument was payable, whichever is later.¹³

Observation:

An unaccepted time draft differs from an time note.¹⁴ Presentment for payment or acceptance is required for time drafts because, unlike the maker of a note who knows that the note has been issued, the drawee of a draft may not know that a draft has been drawn on it.¹⁵

Comment:

The current rules pertaining to drafts payable at a definite time¹⁶ and drafts payable at a stated period of time after sight or acceptance¹⁷ follow the rules contained in the prior version of Article 3.¹⁸

Footnotes

¹ §§ 300 to 307.

² U.C.C. § 3-502(b)(1)[Rev].

³ U.C.C. § 3-502(c)[Rev].

- 4 U.C.C. § 3-502(b)(2)[Rev].
- 5 U.C.C. § 3-502(d)[Rev].
- 6 § 333.
- 7 Sexton v. PNC Bank, 2002 PA Super 33, 792 A.2d 602, 47 U.C.C. Rep. Serv. 2d 280 (2002).
- 8 Sexton v. PNC Bank, 2002 PA Super 33, 792 A.2d 602, 47 U.C.C. Rep. Serv. 2d 280 (2002).
- 9 U.C.C. § 3-502[Rev] Official Comment 4.
- 10 U.C.C. § 3-502(b)(4)[Rev].
- 11 U.C.C. § 3-502(b)(3)[Rev]; U.C.C. § 3-502[Rev] Official Comment 4.
- 12 U.C.C. § 3-502(b)(3)(ii)[Rev].
- 13 U.C.C. § 3-502(b)(3)(i)[Rev].
- 14 U.C.C. § 3-502[Rev] Official Comment 4.
As to the rule that presentment is not usually required for time notes, see § 281.
- 15 U.C.C. § 3-502[Rev] Official Comment 4.
- 16 U.C.C. § 3-502(b)(3)[Rev].
- 17 U.C.C. § 3-502(b)(4)[Rev].
- 18 U.C.C. § 3-502[Rev] Official Comment 4.

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A. Presentment

1. In General

§ 281. Necessity of presentment to charge maker of note

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West's Key Number Digest

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When is instrument "payable on demand or at a definite time" as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10

Presentment for payment is contemplated for notes payable on demand.¹ Further, presentment is contemplated if the note is not payable on demand but is payable at or through a bank or the terms of the note require presentment.² However, in most cases, a formal demand for payment to the maker of the note is not contemplated.³ Rather, the maker is expected to send payment to the holder of the note on the date or dates on which payment is due.⁴ If payment is not made when due, the holder usually makes a demand for payment, but in the normal case in which presentment is waived, demand is irrelevant, and the holder can proceed against indorsers where payment is not received.⁵

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Footnotes

¹ U.C.C. § 3-502(a)(1)[Rev].

² U.C.C. § 3-502(a)(2)[Rev].

³ U.C.C. § 3-502[Rev] Official Comment 2.

⁴ U.C.C. § 3-502[Rev] Official Comment 2.

⁵ U.C.C. § 3-502[Rev] Official Comment 2.

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A. Presentment

1. In General

§ 282. Necessity of presentment for payment to charge any indorser

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  396

Presentment is required to charge the indorser of a note of a corporation, even though such party is an officer, director, or stockholder of the corporation.¹ While an accommodation party is obliged to pay an instrument in the capacity in which the accommodation party signs,² an accommodation indorser is not liable on an instrument unless the conditions precedent to imposing liability on an indorser have been satisfied³ and presentment of a draft is generally necessary for dishonor of the draft.⁴

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Footnotes

¹ [Shenkin v. Grant, 3 Misc. 2d 333, 152 N.Y.S.2d 996 \(Sup 1956\).](#)

² [U.C.C. § 3-419\(b\)\[Rev\].](#)

³ [Oak Park Currency Exchange, Inc. v. Maropoulos, 48 Ill. App. 3d 437, 6 Ill. Dec. 525, 363 N.E.2d 54, 21 U.C.C. Rep. Serv. 1380 \(1st Dist. 1977\).](#)
As to the liability of accommodation parties, generally, see §§ [420](#) to [438](#).

⁴ [§ 280.](#)

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A. Presentment

2. Time of Presentment

§ 283. Time of presentment of negotiable instrument, generally

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  390, 400, 404(1), 404(2)

Forms

Forms relating to presentment, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

With the exception of the presentment of checks,¹ Article 3 does not contain specific rules governing the time for presentment. Instead, the provisions specifying when presentment is necessary in order for dishonor to occur only refer to presentments that are “duly made.”²

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Footnotes

¹ [§ 284](#).

² [U.C.C. § 3-502\(a\)\(1\)\[Rev\]](#); [U.C.C. § 3-502\(a\)\(2\)\[Rev\]](#); [U.C.C. § 3-502\(b\)\[Rev\]](#); [U.C.C. § 3-502\(d\)\[Rev\]](#). As to when presentment is required, generally, see §§ [279](#) to [282](#).

Works.

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A. Presentment

2. Time of Presentment

§ 284. Time of presentment of check

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  390, 400, 404(1)

Under the Uniform Commercial Code, there is a 30-day period within which a check must be presented for payment or given to a depository bank for collection in order to prevent the discharge of an indorser's liability on the check.¹ This period is an absolute rather than a presumptive period.² The drawer of a check is also protected when:³

- the check is not presented for payment or given to a depository bank for collection within 30 days after its date,
- the drawee suspends payments after expiration of the 30-day period without paying the check, and
- such suspension deprives the drawer of funds to cover payment of the check.

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Footnotes

¹ [U.C.C. § 3-415\(e\)](#)[Rev].

² [U.C.C. § 3-415](#)[Rev] Official Comment 4.

³ [U.C.C. § 3-414\(f\)](#)[Rev].
As to the payment of an instrument under Article 3, generally, see §§ [351](#) to [359](#).

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A. Presentment

3. Place of Presentment

§ 285. Place of presentment of negotiable instrument, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  403

Forms

Forms relating to presentment with terms, see Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw®\(r\) Search Query](#)]

Presentment may be made at the place of payment of the instrument¹ and must be made at the place of payment if the instrument is payable at a bank in the United States.² Ordinarily, a negotiable instrument is payable at the place of payment stated in the instrument.³ Except for an instrument that is payable at a bank,⁴ it would appear that, as with the former version of Article 3, presentment may be made anywhere the party to pay or accept can be found.⁵

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Footnotes

¹ U.C.C. § 3-501(b)(1)[Rev].

² § 286.

³ U.C.C. § 3-111[Rev], further specifying where it is payable if no place of payment is stated in the instrument. As to the place of payment, generally, see § 351.

⁴ § 286.

⁵ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:6 (3d ed.).

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A. Presentment

3. Place of Presentment

§ 286. Place of presentment of negotiable instrument made payable at bank

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A.L.R. Library

[Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10](#)

Forms

Forms relating to presentment at bank, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Subject to Article 4 of the Uniform Commercial Code dealing with bank deposits and collections, to an agreement of the parties, and to clearinghouse rules and the like, presentment must be made at the place of payment if the instrument is payable at a bank in the United States.¹ Such presentment is effective even if the maker or acceptor is not present at the bank.² A presentment to the maker or acceptor elsewhere is ineffective.³ The rationale for this provision is that the maker or acceptor might have an arrangement with the designated bank under which funds deposited with that bank are used to pay the instrument.⁴

A branch or separate office of a bank is a separate bank for the purpose of determining the place at which action may be taken under Article 3.⁵ Thus, where a check is drawn on a particular branch by a customer whose account is carried at that branch, that branch is the only proper place for the presentment of that check.⁶

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Footnotes

¹ U.C.C. § 3-501(b)(1)[Rev].

² Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:8 (3d ed.).

³ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:8 (3d ed.).

⁴ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:8 (3d ed.).

⁵ U.C.C. § 4-107[Rev].

⁶ U.C.C. § 4-107[Rev] Official Comment 2.

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment


4. Manner of Presentment

a. In General

§ 287. Manner of presentment of negotiable instrument, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  390, 391, 400, 405

Unless otherwise provided by Article 4 of the Uniform Commercial Code, by an agreement of the parties, by clearinghouse rules, and the like, presentment may be made by any commercially reasonable means, including an oral, written, or electronic communication.¹ Presentment is effective when the demand for payment or acceptance is received by the person to whom presentment is made.² However, the person to whom presentment is made may demand exhibition of the instrument, its surrender, or certain other acts, the compliance with which is necessary in order for the presentment to be effective.³

Observation:

What value the phrase “any commercially reasonable means” may have in restricting the presentment has been questioned by some authorities.⁴ Since the presentment is not effective until received, the view has been expressed that it appears pointless to allow the person having actual knowledge of the demand to challenge the manner in which he or she was informed, particularly in light of the fact that he or she has the privilege of making counterdemands to protect himself or herself.⁵

Practice Tip:

Whether a valid presentment was made requires a factual finding which is a matter that should first be addressed by the trial court, not by the appellate court on appeal.⁶

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Footnotes

- ¹ [U.C.C. § 3-501\(b\)\(1\)\[Rev\]](#).
As to presentment by electronic means, see [§ 289](#).
- ² [U.C.C. § 3-501\(b\)\(1\)\[Rev\]](#).
- ³ [§ 292](#).
- ⁴ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:5 \(3d ed.\)](#).
- ⁵ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:5 \(3d ed.\)](#).
- ⁶ [Bufman Organization v. F.D.I.C., 82 F.3d 1020, 29 U.C.C. Rep. Serv. 2d 905 \(11th Cir. 1996\)](#).

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A. Presentment


4. Manner of Presentment

a. In General

§ 288. Presentment of negotiable instrument by mail

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  405

Forms

Forms relating to presentment by mail, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Presentment of a negotiable instrument may be made by mail.¹ Presentment by mail is effective when received.²

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Footnotes

¹ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:5 \(3d ed.\)](#) (citing the former version of Article 3).

² [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:5 \(3d ed.\)](#).

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A. Presentment

4. Manner of Presentment

a. In General

§ 289. Presentment of negotiable instrument by electronic communication

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[Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10](#)

[Duties of collecting bank with respect to presenting draft or bill of exchange for acceptance, 39 A.L.R.2d 1296](#)

Presentment may be made by any commercially reasonable means, including electronic communication.¹ To this end, the Code recognizes agreements for electronic presentment, under which presentment of an item is made when the presentment notice is received.²

Definition:

An “agreement for electronic presentment,” is an agreement, clearinghouse rule, or Federal Reserve regulation or operating circular providing that presentment of an item may be made by transmission of a presentment notice, that is, an image of the item or information describing the item, rather than by delivery of the item itself.³

When presentment is made by presentment notice, a reference to “item” or “check” in Article 4 means the presentment notice unless the context otherwise indicates.⁴

Observation:

An agreement for electronic presentment refers to an agreement under which presentment may be made to a payor bank by a presentment notice rather than by presentment of the item.⁵ Under imaging technology, the presentment notice might be an image of the item.⁶ The electronic presentment agreement may provide that the item may be retained by a depository bank, other collecting bank, or even a customer of the depository bank, or it may provide that the item will follow the presentment notice.⁷ The identifying characteristic of an electronic presentment agreement is that presentment occurs when the presentment notice is received.⁸ “An agreement for electronic presentment” does not refer to the common case of retention of items by payor banks because the item itself is presented to the payor bank in these cases.⁹

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Footnotes

- ¹ § 287.
- ² U.C.C. § 4-110(b)[Rev].
- ³ U.C.C. § 4-110(a)[Rev].
- ⁴ U.C.C. § 4-110(c)[Rev].
- ⁵ U.C.C. § 4-110[Rev] Official Comment 1.
- ⁶ U.C.C. § 4-110[Rev] Official Comment 1.
- ⁷ U.C.C. § 4-110[Rev] Official Comment 1.
- ⁸ U.C.C. § 4-110[Rev] Official Comment 1.
- ⁹ U.C.C. § 4-110[Rev] Official Comment 1.

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4. Manner of Presentment

a. In General

§ 290. Persons by whom presentment of negotiable instrument may be made

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A.L.R. Library

[Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10](#)

Presentment of a negotiable instrument may be made or by or on behalf of the person entitled to enforce the instrument.¹ Thus, either the payee or a bona fide agent of the payee may make presentment.²

If an item states that it is “payable through” a bank identified in the item, the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item,³ and the item may be presented for payment only by or through the bank.⁴ An item identifying a “payable through” bank can be presented for payment to the drawee only by the “payable through” bank.⁵ The item cannot be presented to the drawee over the counter for immediate payment or by a collecting bank other than the “payable through” bank.⁶

Observation:

Article 4 contains alternative approaches presentment when an item says it is “payable at” a bank designated.⁷ Under one

alternative, a note payable at a bank is the equivalent of a draft drawn on the bank and the midnight deadline provisions⁸ of Article 4 apply.⁹ Under the second alternative a “payable at” bank is in the same position as a “payable through” bank as set out above,¹⁰ that is, a collecting bank and not a payor bank.¹¹

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Footnotes

- ¹ U.C.C. § 3-501(a)[Rev].
- ² *Brown v. Fifth Third Bank*, 10 Ohio App. 3d 97, 460 N.E.2d 739, 38 U.C.C. Rep. Serv. 177 (1st Dist. Hamilton County 1983) (decided under the 1952 version of Article 3).
- ³ U.C.C. § 4-106(a)(i)[Rev].
- ⁴ U.C.C. § 4-106(a)(ii)[Rev].
- ⁵ U.C.C. § 4-106[Rev] Official Comment 1.
- ⁶ U.C.C. § 4-106[Rev] Official Comment 1.
- ⁷ U.C.C. § 4-106(b)[Rev].
- ⁸ U.C.C. § 4-301[Rev]; U.C.C. § 4-302[Rev].
- ⁹ U.C.C. § 4-106[Rev] Official Comment 2.
- ¹⁰ U.C.C. § 4-106[Rev] Official Comment 2.
- ¹¹ U.C.C. § 4-106[Rev] Official Comment 2.

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment

4. Manner of Presentment

a. In General

§ 291. Persons to whom presentment of negotiable instrument may be made

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[Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10](#)

Forms

Forms relating to presentment and person with authority, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

The identity of the person to whom presentment of a negotiable instrument is made is determined in terms of the nature of the presentment demand and the nature of the instrument involved.¹ Thus, presentment to pay an instrument may be made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank.² Presentment for acceptance of a draft may be made to the drawee.³

Subject to Article 4 of the Uniform Commercial Code, to an agreement of the parties, and to clearinghouse rules and the like,

presentment is effective when made to any one of two or more makers, acceptors, drawees, or other payors,⁴ without the necessity of showing that one is the partner of the other or that he or she has authority to act for the other.⁵ Thus, when there are six comakers, presentment is not defective because it is made only to three of the comakers.⁶

Where presentment is made to an organization as presentee, Article 3 does not distinguish in terms of different departments within the organization.⁷ Moreover, the fact that the person designated as the person on whom presentment is to be made does not have authority to pay or accept is immaterial, as there is no requirement that presentment can only be made upon a person having information and authority to pay or dishonor.⁸ Hence, the proof and transit department of a computerized clearinghouse is not disqualified from being the presentee, as against the contention that it lacked authority or information on which to accept or dishonor.⁹

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Footnotes

- ¹ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:4 (3d ed.).
- ² U.C.C. § 3-501(a)(i)[Rev].
- ³ U.C.C. § 3-501(a)(ii)[Rev].
- ⁴ U.C.C. § 3-501(b)(1)[Rev].
- ⁵ *First Arlington Nat. Bank v. Stathis*, 90 Ill. App. 3d 802, 46 Ill. Dec. 175, 413 N.E.2d 1288, 32 U.C.C. Rep. Serv. 260 (1st Dist. 1980); *Engine Parts, Inc. v. Citizens Bank of Clovis*, 1978-NMSC-040, 92 N.M. 37, 582 P.2d 809, 23 U.C.C. Rep. Serv. 1248 (1978).
- ⁶ *First Arlington Nat. Bank v. Stathis*, 90 Ill. App. 3d 802, 46 Ill. Dec. 175, 413 N.E.2d 1288, 32 U.C.C. Rep. Serv. 260 (1st Dist. 1980).
Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:10 (3d ed.) (If there are joint makers, a presentment to any one of them is effective as a presentment of the instrument).
- ⁷ *Capital City First Nat. Bank v. Lewis State Bank*, 341 So. 2d 1025, 21 U.C.C. Rep. Serv. 183 (Fla. 1st DCA 1977).
- ⁸ *Capital City First Nat. Bank v. Lewis State Bank*, 341 So. 2d 1025, 21 U.C.C. Rep. Serv. 183 (Fla. 1st DCA 1977).
- ⁹ *Capital City First Nat. Bank v. Lewis State Bank*, 341 So. 2d 1025, 21 U.C.C. Rep. Serv. 183 (Fla. 1st DCA 1977).

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b. Rights of Person to Whom Presentment is Made

§ 292. Rights of person to whom presentment of negotiable instrument is made, generally

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  386, 387, 402

Forms

Forms relating to counterdemands, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

While in the first instance a mere demand for acceptance or payment is a sufficient presentment,¹ the person to whom presentment is made is permitted to make certain counterdemands on the presenter in order to protect itself from improper and fraudulent demands.² Thus, subject to Article 4 of the Uniform Commercial Code, to agreement of the parties, and to clearinghouse rules and the like, the person making presentment must, upon demand of the person to whom presentment is made:³

- (1) exhibit the instrument,
 - (2) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and
 - (3) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.
- Without dishonoring the instrument, the party to whom presentment is made may also return the instrument for lack of a necessary indorsement.⁴

Comment:

The provisions allowing for the requirement of reasonable identification and permitting the return of an instrument lacking a necessary indorsement follow the prior versions of Article 3.⁵

The fact that Article 3 authorizes a drawee to whom the instrument is presented for payment to require identification, evidence of the presenter's authority, or a signed receipt for partial or full payment does not establish any duty on the part of a drawee bank.⁶ Rather, the specified precautions are merely made available to the drawee without danger that dishonor of the instrument will be found to have occurred.⁷

While not expressly stated in Article 3, a presentment is not effective until the presenter has reasonably satisfied all proper counterdemands of the presentee,⁸ and failure to comply with any authorized demand of the presentee invalidates the presentment.⁹

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Footnotes

- ¹ §§ 279, 287.
- ² Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:11 (3d ed.).
- ³ U.C.C. § 3-501(b)(2)[Rev].
As to the demand that the instrument be exhibited, see § 293.
As to the demand that the presenter give reasonable identification, see § 294.
- ⁴ U.C.C. § 3-501(b)(3)(i)[Rev].
- ⁵ U.C.C. § 3-501[Rev] Official Comment.
- ⁶ *Wright v. Bank of California, Nat. Ass'n*, 276 Cal. App. 2d 485, 81 Cal. Rptr. 11, 6 U.C.C. Rep. Serv. 1165 (1st Dist. 1969) (decided under the 1952 version of Article 3).
- ⁷ *Wright v. Bank of California, Nat. Ass'n*, 276 Cal. App. 2d 485, 81 Cal. Rptr. 11, 6 U.C.C. Rep. Serv. 1165 (1st Dist. 1969).
- ⁸ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:11 (3d ed.).
- ⁹ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:17 (3d ed.).

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment

4. Manner of Presentment

b. Rights of Person to Whom Presentment is Made

§ 293. Person to whom presentment is made as entitled to require exhibition of negotiable instrument

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West's Key Number Digest, Bills and Notes  386, 387, 402

Unless the parties have otherwise agreed, such as in the case of an electronic presentment agreement,¹ the person to whom presentment is made may require exhibition of the instrument.² Thus, the maker of two notes payable to a savings and loan company may, without dishonor, require the exhibition of the notes in order to identify the party that had the authority to accept payment.³ Where the presentment is one for acceptance, the instrument will necessarily be exhibited to the drawee since the acceptance must be written on the instrument.⁴

Observation:

Although no provision is made as to the time within which the presenter must produce and exhibit the instrument, this provision⁵ of Article 3 of the Uniform Commercial Code should be interpreted as requiring the production of the instrument within a reasonable time.⁶ Likewise, the presentee should be allowed to specify a reasonable time rather than leave the matter undetermined.⁷ However, even though the making of a demand for the exhibition of the instrument does not dishonor the instrument, if the presentee requires exhibition within a time that is unreasonably short, the courts likely will hold that the action of the presentee is equivalent to a repudiation of the obligation and, therefore, constitutes a dishonor of the instrument.⁸

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Footnotes

- ¹ [U.C.C. § 3-501](#)[Rev] Official Comment.
As to electronic presentment agreements, see [§ 289](#).
- ² [§ 292](#).
- ³ [Wilner v. O'Donnell, 637 S.W.2d 757, 35 U.C.C. Rep. Serv. 200 \(Mo. Ct. App. E.D. 1982\)](#) (where the notes had been transferred from the savings and loan company to the purchaser, who paid for them with funds furnished by a realty company).
- ⁴ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:13 \(3d ed.\)](#)
As to acceptance of a draft, generally, see §§ [333](#) to [342](#).
- ⁵ [U.C.C. § 3-501\(b\)\(2\)](#)[Rev].
- ⁶ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:13 \(3d ed.\)](#).
- ⁷ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:13 \(3d ed.\)](#).
- ⁸ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:13 \(3d ed.\)](#).

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A. Presentment

4. Manner of Presentment

b. Rights of Person to Whom Presentment is Made

§ 294. Verification of presenter's identification

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  386, 387, 402

Where reasonable identification is required of the presenting party by the presentee,¹ “reasonable identification” means identification that is “commercially reasonable.”² Whether a demand is reasonable depends upon the particular situation.³ The payor may be unreasonable in asking for any identification where the presenter is well known to the payor, but the payor may require substantial information if he or she has reasonable grounds to question the identity of the presenter.⁴ The presenter's social security number or driver's license, home address, place of business, and checking or savings account numbers will usually be found to be reasonable requests.⁵ A bank's practice of requiring check presenters to provide a thumbprint signature before honor a checking is a form of reasonable identification, even though a thumbprint cannot be used, in most instances, to confirm immediately the identity of a presenter when the check is presented.⁶

Because each branch of a bank is a separate place of business, the fact that a party making presentment is known at one branch does not prevent another branch from making a reasonable request for identification.⁷

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Footnotes

¹ § 292.

² Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:14 (3d ed.).

³ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:14 (3d ed.).

⁴ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:14 (3d ed.).

⁵ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:14 (3d ed.).

⁶ *Messing v. Bank of America, N.A.*, 143 Md. App. 1, 792 A.2d 312, 47 U.C.C. Rep. Serv. 2d 301 (2002), judgment aff'd, 373 Md. 672, 821 A.2d 22, 50 U.C.C. Rep. Serv. 2d 1 (2003) (noting that a thumbprint may be used to authenticate a signature per U.C.C. § 1-201[Rev] Official Comment 37).

⁷ *Buckley v. Trenton Saving Fund Soc.*, 111 N.J. 355, 544 A.2d 857, 6 U.C.C. Rep. Serv. 2d 1040 (1988).

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A. Presentment

4. Manner of Presentment

b. Rights of Person to Whom Presentment is Made

§ 295. Surrender of negotiable instrument by presenter

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A presentee who is requested to pay an instrument in full may demand the surrender of the instrument in return for the payment.¹ If the presentee is making only a partial or installment payment, he or she may demand a notation of receipt for such payment's being written on the instrument.² In this situation, a receipt for any payment that is not written on the instrument does not satisfy such a demand.³ Rather, the payment receipt must appear on the instrument or the fact of payment cannot be asserted against a subsequent taker of the instrument who has the rights of a holder in due course.⁴

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Footnotes

¹ [§ 292.](#)

² [U.C.C. § 3-501\(b\)\(2\)\(iii\)](#)[Rev].

³ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:15](#) (3d ed.).

⁴ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:15](#) (3d ed.).
As to the status and rights of a holder in due course, see §§ [214](#) to [278](#).

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment

4. Manner of Presentment

b. Rights of Person to Whom Presentment is Made

§ 296. Failure of presentment to comply with terms of negotiable instrument, agreement, or applicable law

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Without dishonoring the instrument, the party to whom presentment is made may also refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.¹ For purposes of this provision, the reference to the “agreement of the parties” is construed as limited to an agreement between the presenter and the presentee, since there is no basis for binding the presenter by an agreement with some other person unless that agreement can qualify as a defense that in the particular case may be asserted against the presenter.²

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Footnotes

¹ U.C.C. § 3-501(b)(3)(ii)[Rev].

² Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-501:17 (3d ed.) (citing earlier version of Article 3).

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment

5. Time for Acceptance or Payment

§ 297. Time for acceptance or payment of negotiable instrument, generally

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When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10

Forms

Forms relating to presentment, notice of dishonor, and protest, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

A payor must generally decide whether to pay or to accept an instrument on the day of presentment.¹ For example, when an unaccepted draft, other than a documentary draft, is presented for acceptance, and the draft is payable on a date stated in the draft,² or on elapse of a period of time after sight or acceptance,³ the draft must be accepted on the day of presentment.

A note payable on demand must be paid on the day of presentment.⁴ An unaccepted draft payable on demand, other than a

documentary draft⁵ or a check not presented to the payor bank for immediate payment over the counter,⁶ must be paid on presentment,⁷ as must an accepted draft payable on demand.⁸

Instruments which must be paid on the day they become payable or on the day they are presented for payment, whichever is later, include—

- an accepted draft that is not payable on demand.⁹
- an unaccepted draft, other than a documentary draft, that is payable on a date stated in the draft.¹⁰
- a note that is not payable on demand, but that is payable at or through a bank or that requires presentment by its terms.¹¹

Observation:

Even though Saturday is not a “banking day” under the Uniform Commercial Code,¹² where the payor-depositary-drawee bank is presented with a large check on a Saturday, it has until the close of business to pay the check.¹³

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Footnotes

- ¹ U.C.C. § 3-501[Rev] Official Comment.
As to the effect of presentment after a cutoff hour established by the party to whom presentment is made, see § 299.
- ² U.C.C. § 3-502(b)(3)(ii)[Rev].
As to unaccepted documentary drafts, see § 298.
- ³ U.C.C. § 3-502(b)(4)[Rev].
- ⁴ U.C.C. § 3-502(a)(1)[Rev].
- ⁵ U.C.C. § 3-502(b)[Rev] (intro).
As to the rule with respect to an unaccepted documentary draft, see § 298.
- ⁶ U.C.C. § 3-502(b)(1)[Rev].
In the case of checks presented for immediate payment over the counter dishonor occurs if presentment for payment is made and payment is not made on the day of presentment. U.C.C. § 3-502[Rev] Official Comment 4.
- ⁷ U.C.C. § 3-502(b)(2)[Rev].
- ⁸ U.C.C. § 3-502(d)(1)[Rev].
Checks from health insurers to pay physicians for services rendered to insured patients, which were diverted by the physicians’ former employees who deposited them into sham entities’ bank accounts, were never dishonored and were ultimately paid by the drawee banks, thus discharging the insurers’ obligations; the payor banks accepted the drafts from the depositing banks, and paid out on them, complying with the statute requiring that drafts be paid on the day they were presented to a payor bank for payment. *Affiliated Health Group, Ltd. v. Devon Bank*, 2016 IL App (1st) 152685, 405 Ill. Dec. 511, 58 N.E.3d 772, 89 U.C.C. Rep. Serv. 2d 1324 (App. Ct. 1st Dist. 2016).
- ⁹ U.C.C. § 3-502(d)(2)[Rev].
- ¹⁰ U.C.C. § 3-502(b)(3)(i)[Rev].
As to the rule with respect to an unaccepted documentary draft, see § 298.
- ¹¹ U.C.C. § 3-502(a)(2)[Rev].

¹² U.C.C. § 4-104(3)[Rev].

¹³ DeLuca v. BancOhio Natl. Bank, Inc., 74 Ohio App. 3d 233, 598 N.E.2d 781, 19 U.C.C. Rep. Serv. 2d 216 (10th Dist. Franklin County 1991) (decided under the 1952 version of Article 3).

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment

5. Time for Acceptance or Payment

§ 298. Unaccepted documentary drafts

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[Banks: what is "documentary draft" under U.C.C. sec. 4-104\(1\)\(f\), 65 A.L.R.4th 1095](#)

Unaccepted documentary drafts generally must be accepted or paid according to the rules stated for unaccepted drafts generally,¹ except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those rules.² This extension of time is given because of the time that may be needed to examine the documents.³

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Footnotes

¹ U.C.C. § 3-502(b)(2)[Rev] through U.C.C. § 3-502(b)(4)[Rev], discussed in § 297.

² U.C.C. § 3-502(c)[Rev].

³ U.C.C. § 3-502[Rev] Official Comment 5.

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A. Presentment

5. Time for Acceptance or Payment

§ 299. Effect of cutoff hour established by party to whom presentment is made

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Forms

Forms relating to presentment, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Presentment is ordinarily effective when the demand for payment or acceptance is received by the person to whom presentment is made.¹ However, because a payor must decide whether to pay or to accept on the day of presentment,² Article 3 of the Uniform Commercial Code allows the payor to set a cutoff hour for receipt of instruments presented.³ Subject to Article 4 of the Code, to agreement of the parties, and to clearinghouse rules and the like, the party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if:⁴

- (1) the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and
 - (2) presentment is made after the cutoff hour.
- Moreover, if the cutoff time of the presentee is earlier than 2 p.m., it cannot defer action until the next business day but must treat the presentment as having been received on the day of its actual receipt.⁵

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Footnotes

¹ § 287.

² § 297.

³ U.C.C. § 3-501[Rev] Official Comment.

⁴ U.C.C. § 3-501(b)(4)[Rev].

⁵ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-501:12 (3d ed.).

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A. Presentment

6. Excuse and Waiver

a. Excuse

§ 300. When presentment for acceptance or payment of an instrument may be excused, generally

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West's Key Number Digest, Bills and Notes  406, 407

Forms

Forms relating to excuse and waiver, see Am. Jur. Pleading and Practice Forms, Bills and Notes [[Westlaw®\(r\) Search Query](#)]

Forms relating to excusing presentment, see Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw®\(r\) Search Query](#)]

Under Article 3 of the Uniform Commercial Code, presentment for acceptance or payment of an instrument may be excused if:

- (1) the person entitled to present the instrument cannot with reasonable diligence make presentment.¹
- (2) the maker or acceptor has dishonored or repudiated the obligation to pay the instrument, or otherwise has no reason to expect or right to require that the instrument be paid or accepted.²
- (3) the maker or acceptor is dead or in insolvency proceedings.³
- (4) by the terms of the instrument, presentment is not necessary to enforce the obligation of the enforcer or the drawer, or the drawer or indorser whose obligation is being enforced has waived presentment.⁴
- (5) the drawer has instructed the drawee not to pay or accept the draft.⁵
- (6) the drawee is not obligated to the drawer to pay the draft.⁶

Whether presentment is excused presents a question of fact, not law.⁷

Comment:

The provisions in the current version of Article 3⁸ governing excused presentment largely restate the similar provisions in the former version of Article 3.⁹

Caution:

Even though presentment for acceptance or payment may be excused, dishonor will occur without presentment if the instrument is not duly accepted and paid.¹⁰

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Footnotes

- ¹ § 301.
- ² § 302.
- ³ § 303.
- ⁴ § 305.
- ⁵ § 304.
- ⁶ U.C.C. § 3-504(a)(v)[Rev].
- ⁷ *McLaughlin v. Sports & Recreation Club, Inc.*, 356 N.W.2d 398, 39 U.C.C. Rep. Serv. 1373 (Minn. Ct. App. 1984).
- ⁸ U.C.C. § 3-504[Rev].
- ⁹ U.C.C. § 3-504[Rev] Official Comment.
- ¹⁰ § 308.

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Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment


6. Excuse and Waiver

a. Excuse

§ 301. Inability to make presentment by exercise of reasonable diligence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  390, 400, 406, 407

Forms

Forms relating to reasonable diligence, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Presentment for acceptance or payment of an instrument is excused when presentment cannot be made with reasonable diligence.¹ Reasonable diligence requires only that an effort reasonable under the circumstances be made.² Whether the person required to make presentment has exercised reasonable diligence is a question of fact to be determined by the trier of fact in light of all of the surrounding circumstances, including reasonable commercial standards, practices, and usages.³

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Footnotes

¹ U.C.C. § 3-504(a)(i)[Rev].

² Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-504:10 (3d ed.).

³ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-504:10 (3d ed.).

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11 Am. Jur. 2d Bills and Notes § 302

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment

6. Excuse and Waiver

a. Excuse

§ 302. Presentment as excused absent right to acceptance or payment; repudiation of obligation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  390, 400, 406

Forms

Forms relating to repudiation, see Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw® Search Query](#)]

Presentment is entirely excused when the party whose obligation is being enforced has no reason to expect or right to require that the instrument be accepted or paid.¹ However, the fact that the drawers of a check tender the check to the payee before depositing funds to cover it also does not excuse presentment on the basis that the drawers had no reason to expect that the check would be paid and no right to require its payment, since there is no rule of law which requires that the funds be deposited before the check can be tendered.² Presentment is also excused when maker or acceptor has dishonored or repudiated the obligation to pay the instrument.³

Under these rules, lack of presentment is not a defense to a defendant indorser where it is clear that it was he or she who had defaulted.⁴ Where an indorser has such knowledge or so participates in the affairs of the primary party that the indorser knows that the instrument will not be honored by the primary party, it is likewise not required that the holder go through the useless gesture of making a presentment and of notifying the secondary party in order to hold the latter liable.⁵

Observation:

Although, typically, a repudiation will occur prior to the time that presentment would otherwise be made, it does not matter when the repudiation occurs.⁶

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Footnotes

¹ U.C.C. § 3-504(a)(iv)[Rev].

² *McLaughlin v. Sports & Recreation Club, Inc.*, 356 N.W.2d 398, 39 U.C.C. Rep. Serv. 1373 (Minn. Ct. App. 1984).

³ U.C.C. § 3-504(a)(ii)[Rev].

⁴ *Rourke v. Angelis*, 12 U.C.C. Rep. Serv. 526 (N.Y. Sup 1973).

⁵ *Makel Textiles, Inc. v. Dolly Originals, Inc.*, 4 U.C.C. Rep. Serv. 95 (N.Y. Sup 1967).

Where a note was payable at a specified place and the holder telephoned the maker on the note's due date and requested payment but was told by the maker that payment could not be made at that time, the holder's failure to present the note at a specified place for payment was excused because the maker, on the note's due date, had refused payment for reasons other than the lack of proper presentment. *Smith v. Bejello*, 431 So. 2d 80 (La. Ct. App. 1st Cir. 1983).

Formal presentment of a check tendered in discharge of the defendant's underlying obligation was entirely excused where payment of the check was refused by the bank solely for the lack of sufficient funds in the defendant's account and not for the lack of proper presentment. *Rains v. Lewis*, 20 Wash. App. 117, 579 P.2d 980 (Div. 2 1978).

⁶ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-504:6 (3d ed.).

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A. Presentment

6. Excuse and Waiver

a. Excuse

§ 303. Death or insolvency as excusing presentment of negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  390, 400, 406

Forms

Forms relating to death or insolvency, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Definitions:

“Insolvency proceedings” include any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.¹ A person is “insolvent” who either has ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute, or cannot pay debts as they become due, or is insolvent within the meaning of the Federal Bankruptcy Law.²

Presentment is excused if the acceptor or maker of an instrument is dead or in insolvency proceedings.³ The statutory

provision excusing presentment if the acceptor or maker is dead or in insolvency proceedings should be liberally construed so as to include both the “death” of an artificial person, as by corporate dissolution or forfeiture of a corporate charter, and the mental incompetency of a natural person.⁴ However, an insolvency proceeding is an excuse for the absence of presentment only when the proceeding is pending at the time when the presentment is due.⁵ Consequently, the fact that the person on whom presentment should have been made subsequently goes into bankruptcy does not operate retroactively to excuse the absence of presentment at the earlier time.⁶

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Footnotes

¹ U.C.C. § 1-201(b)(22)[Rev].

² U.C.C. § 1-201(b)(23)[Rev].

³ U.C.C. § 3-504(a)(ii)[Rev].

⁴ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-504:7 (3d ed.).

⁵ Custom Craft Tile, Inc. v. Bridgecrest, Inc., 662 S.W.2d 320, 37 U.C.C. Rep. Serv. 1204 (Mo. Ct. App. E.D. 1983).

⁶ Custom Craft Tile, Inc. v. Bridgecrest, Inc., 662 S.W.2d 320, 37 U.C.C. Rep. Serv. 1204 (Mo. Ct. App. E.D. 1983).

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A. Presentment

6. Excuse and Waiver

a. Excuse

§ 304. Stop-payment of draft as excusing presentment of negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  390, 400, 406

Presentment for payment or acceptance of an instrument is excused if the drawer instructed the drawee not to pay or accept the draft.¹ Thus, where the drawer stops payment on a draft, presentment is entirely excused.²

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Footnotes

¹ U.C.C. § 3-504(a)(v)[Rev].

² UAW-CIO Local No. 31 Credit Union v. Royal Ins. Co., Ltd., 594 S.W.2d 276, 28 U.C.C. Rep. Serv. 1435 (Mo. 1980).

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

A. Presentment

6. Excuse and Waiver

b. Waiver

§ 305. Waiver of presentment of negotiable instrument, generally

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A.L.R. Library

When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Forms

Forms relating to waiver of presentment, see Am. Jur. Pleading and Practice Forms, Bills and Notes [\[Westlaw®\(r\): Search Query\]](#)

Forms relating to waiver of presentment, see Am. Jur. Legal Forms 2d, Bills and Notes; Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Presentment for acceptance or payment of an instrument is excused if the drawer or indorser whose obligation is being enforced has waived presentment.¹ The waiver may be express² or implied.³

Observation:

A waiver of presentment also constitutes a waiver of notice of dishonor,⁴

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Footnotes

- ¹ U.C.C. § 3-504(a)(iv)[Rev].
Defendants' waivers of presentment excused any requirement that the instrument sued upon be presented in connection with litigation against the issuers or guarantors [IRB-Brasil Resseguros S.A. v. Portobello Intern. Ltd.](#), 84 A.D.3d 637, 923 N.Y.S.2d 508 (1st Dep't 2011).
- ² § 306.
- ³ § 307.
- ⁴ U.C.C. § 3-504(b)[Rev].
As to dishonor and notice of dishonor, generally, see §§ [308](#), [309](#), [317](#) to [319](#).

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A. Presentment

6. Excuse and Waiver

b. Waiver

§ 306. Express waiver of presentment of negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Forms

Forms relating to express waiver of presentment, see Am. Jur. Pleading and Practice Forms, Commercial Code
[\[Westlaw®\(r\) Search Query\]](#)

The terms of an instrument may state that presentment is not necessary in order to enforce the obligation of indorsers or the drawer.¹ Where a note sued on and incorporated in a complaint contains an express waiver of presentment and notice, the contention that the complaint be dismissed for failure to allege presentment and notice is without merit.²

In order to be effective, however, the waiver must be clear and unequivocal.³ That is, the waiver provision must state specifically and separately the rights surrendered.⁴ A statement on a note providing that “presentment for payment and notice

of nonpayment are hereby waived” constitutes an automatic waiver of presentment.⁵

Ordinarily, waiver will occur by reason of express words added by the drawer or indorser to his or her signature.⁶ However, a waiver may also be made by a separate written or oral agreement.⁷

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Footnotes

- ¹ U.C.C. § 3-504(a)(iii)[Rev].
The terms of a note may waive presentment. *Josephthal Holdings, Inc. v. Weisman*, 5 A.D.3d 221, 773 N.Y.S.2d 398 (1st Dep’t 2004).
- ² *Fett Developing Co. v. Garvin*, 119 Ga. App. 569, 168 S.E.2d 212, 6 U.C.C. Rep. Serv. 680 (1969).
- ³ *Burns v. Stanton*, 286 S.W.3d 657, 69 U.C.C. Rep. Serv. 2d 989 (Tex. App. Texarkana 2009).
- ⁴ *Adams v. First Nat. Bank of Bells/Savoy*, 154 S.W.3d 859 (Tex. App. Dallas 2005).
- ⁵ *First New Haven Nat. Bank v. Clarke*, 33 Conn. Supp. 179, 368 A.2d 613, 20 U.C.C. Rep. Serv. 1228 (C.P. 1976).
A debtor’s waiver of “demand” or “presentment,” in just so many words, is effective to waive presentment as to the debt owed under a promissory note. *Adams v. First Nat. Bank of Bells/Savoy*, 154 S.W.3d 859 (Tex. App. Dallas 2005).
- ⁶ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-504:5 (3d ed.).
- ⁷ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-504:5 (3d ed.).

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A. Presentment

6. Excuse and Waiver

b. Waiver

§ 307. Implied waiver of presentment of negotiable instrument

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A.L.R. Library

When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Presentment of a buyer's check may be excused because of the buyer's implied waiver of presentment.¹ Conduct manifesting the intent to waive the requirement of presentment will constitute a waiver of the requirement or presentation.² If the holder relies on statements or conduct manifesting an intention to waive presentment, the drawer or indorser will be estopped to raise lack of presentment as a defense.³

A drawing bank's cashing of its teller's check and retaining the check cashing fee charged to non-accountholders does not constitute partial payment on the check and waiver of presentment to the drawee.⁴

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Footnotes

¹ Hart v. Sims, 702 F.2d 574, 35 U.C.C. Rep. Serv. 1517 (5th Cir. 1983).

² Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-504:5 (3d ed.).

³ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-504:5 (3d ed.).

⁴ Murphy v. National City Bank, 560 F.3d 530, 68 U.C.C. Rep. Serv. 2d 581 (6th Cir. 2009).

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B. Dishonor, Notice of Dishonor, and Protest

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Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 🔑 408.1 to 411.1, 413, 415 to 422(1), 498

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A.L.R. Library

A.L.R. Index, Bills and Notes

A.L.R. Index, Checks and Drafts

A.L.R. Index, Dishonor

A.L.R. Index, Notice of Dishonor

A.L.R. Index, Protests

A.L.R. Index, Uniform Commercial Code (UCC)

West's A.L.R. Digest, Bills and Notes 🔑 408.1 to 411.1, 413, 415 to 422(1), 498

West's A.L.R. Digest, [Finance, Banking, and Credit](#) 🔑 592, 594

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B. Dishonor, Notice of Dishonor, and Protest


1. Dishonor

a. In General

§ 308. Dishonor of negotiable instrument, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  411.1

A.L.R. Library

[Damages recoverable for wrongful dishonor of check under U.C.C. sec. 4-402, 88 A.L.R.4th 644](#)

[Who may recover for wrongful dishonor of check under U.C.C. sec. 4-402, 88 A.L.R.4th 613](#)

[What constitutes wrongful dishonor of check rendering payor bank liable to drawer under U.C.C. sec. 4-402, 88 A.L.R.4th 568](#)

Dishonor ordinarily occurs when a negotiable instrument is not accepted or paid upon presentment.¹ Dishonor of an instrument also occurs when presentment, while otherwise required for dishonor, is excused and the instrument is not duly accepted or paid.²

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Footnotes

¹ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-502:4 \(3d ed.\)](#).
As to the dishonor of notes, see [§ 310](#).
As to the dishonor of unaccepted drafts, see §§ [312](#) to [314](#).

As to the dishonor of accepted drafts, see § 311.

²

U.C.C. § 3-502(e)[Rev].

As to when presentment is excused, see §§ 300 to 304.

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11 Am. Jur. 2d Bills and Notes § 309

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VIII. Presentment, Dishonor, Notice of Dishonor, and Protest

B. Dishonor, Notice of Dishonor, and Protest


1. Dishonor

a. In General

§ 309. Dishonor of negotiable instrument upon revocation of mistaken payment or acceptance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Notwithstanding the provisions of Article 4 of the Uniform Commercial Code concerning the final payment of items by banks,¹ if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance, the instrument is deemed not to have been paid or accepted and is treated as dishonored.² In addition, the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.³

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Footnotes

¹ U.C.C. § 4-215[Rev].

² U.C.C. § 3-418(d)[Rev].

³ U.C.C. § 3-418(d)[Rev].

As to parties entitled to enforce negotiable instruments, see §§ 576 to 581.

As to the recovery back of payments made by mistake, see §§ 360, 361.

11 Am. Jur. 2d Bills and Notes § 310

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B. Dishonor, Notice of Dishonor, and Protest


1. Dishonor

b. Notes and Accepted Drafts

§ 310. Dishonor of notes

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A.L.R. Library

When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Forms

Forms relating to dishonor of note, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw® Search Query\]](#)

A note payable on demand is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.¹ This rule is unchanged from the earlier version of Article 3.² If a note is not payable on demand and is payable at or through a bank, or if the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.³ Any other note which is not payable on demand is dishonored if it is not paid on the day it becomes payable.⁴

§ 310. Dishonor of notes, 11 Am. Jur. 2d Bills and Notes § 310

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Footnotes

- ¹ U.C.C. § 3-502(a)(1)[Rev].
As to presentment, generally, see § 279.
- ² U.C.C. § 3-502[Rev] Official Comment 3.
- ³ U.C.C. § 3-502(a)(2)[Rev].
- ⁴ U.C.C. § 3-502(a)(3)[Rev].

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B. Dishonor, Notice of Dishonor, and Protest


1. Dishonor

b. Notes and Accepted Drafts

§ 311. Dishonor of accepted drafts

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When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Dishonor of an accepted draft payable on demand is governed by the same rules that apply to a note payable on demand.¹ Thus, if the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.²

Where an accepted draft is payable at a definite time, its dishonor is governed by the same rule as that which applies to a note which is payable at or through a bank.³ Under this rule, if the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.⁴

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Footnotes

¹ [U.C.C. § 3-502](#)[Rev] Official Comment 6.

Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-502:13 (3d ed.).
As to the dishonor of a demand note, see § 310.

² U.C.C. § 3-502(d)[Rev].

³ U.C.C. § 3-502[Rev] Official Comment 6.
As to the dishonor of a note payable at or through a bank, see § 310.

⁴ U.C.C. § 3-502(d)[Rev].

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B. Dishonor, Notice of Dishonor, and Protest


1. Dishonor

c. Unaccepted Drafts

§ 312. Dishonor of unaccepted drafts, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

If a draft is payable at a definite time, it may be dishonored either by nonpayment or nonacceptance.¹ Thus, if an unaccepted draft is payable on a date stated in the draft, the draft is dishonored if either:²

- (1) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or
- (2) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.³

Comment:

The rules in the current version of Article 3 relating to the dishonor of time drafts⁴ follow the rules set forth in the pertinent provision of the former version of Article 3.⁵

In most cases, dishonor of a draft payable on demand occurs if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.⁶ This rule applies to checks presented for immediate payment over the counter and to demand drafts other than checks,⁷ and is the same as the rule applicable to the dishonor of a note payable on demand.⁸

Observation:

Where the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored.⁹

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Footnotes

- ¹ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-502:10 (3d ed.).
As to the effect of a late acceptance of a draft, see § 316.
- ² U.C.C. § 3-502(b)(3)[Rev].
- ³ U.C.C. § 3-502(b)(4)[Rev].
- ⁴ U.C.C. §§ 3-502(b)(3) (Rev), 3-502(b)(4)[Rev]].
- ⁵ U.C.C. § 3-502[Rev] Official Comment 4
- ⁶ U.C.C. § 3-502(b)(2)[Rev].
- ⁷ U.C.C. § 3-502[Rev] Official Comment 4.
A bank dishonors a check when it does not pay the face amount to the holder upon presentment, such as where the bank deducts a service charge from the face amount of the check because the holder was not a customer of the bank. *Your Style Publications, Inc. v. Mid Town Bank and Trust Co. of Chicago*, 150 Ill. App. 3d 421, 103 Ill. Dec. 488, 501 N.E.2d 805, 3 U.C.C. Rep. Serv. 2d 675 (1st Dist. 1986) (decided under the 1952 version of Article 3).
As to the rules applicable to checks presented for payment through the check collection system, see § 314.
- ⁸ Frisch, *Lawrence's Anderson on the Uniform Commercial Code* § 3-502:6 (3d ed.).
As to the dishonor of demand notes, see § 310.
- ⁹ § 339.

11 Am. Jur. 2d Bills and Notes § 313

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1. Dishonor

c. Unaccepted Drafts

§ 313. Dishonor of documentary drafts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  411.1

A.L.R. Library

[Banks: what is "documentary draft" under U.C.C. sec. 4-104\(1\)\(f\), 65 A.L.R.4th 1095](#)

Definition:

A "documentary draft" is a draft to be presented for acceptance or payment if specified documents, certificated securities, instructions for uncertificated securities, or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.¹

The dishonor of documentary drafts is generally governed by the same principles as those applicable to nondocumentary drafts other than checks.² Dishonor of an unaccepted documentary draft occurs according to the rules applicable to unaccepted time drafts and demand drafts,³ except that payment or acceptance may be delayed for a stated additional period

without dishonor.⁴

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Footnotes

¹ [U.C.C. § 4-104\(a\)\(6\)](#)[Rev].

² [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-502:12](#) (3d ed.).

³ [§ 312](#).

⁴ [U.C.C. § 3-502\(c\)](#)[Rev].
As to acts not constituting dishonor, see §§ [315](#), [316](#).

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1. Dishonor

c. Unaccepted Drafts

§ 314. Dishonor of checks presented for payment through check collection system

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A.L.R. Library

[Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10](#)

If a check is presented for payment to the payor bank other than for immediate payment over the counter, the check is dishonored if, under the applicable sections of Article 4 of the Uniform Commercial Code,¹ the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment,² or if the bank becomes accountable for the amount of the check.³ When a check is presented for payment through the check collection system, the drawee bank normally makes settlement for the amount of the check to the presenting bank.⁴ Under Article 4 of the Code, however, the drawee bank may recover this settlement if it returns the check within its midnight deadline, in which event the check is not paid and dishonor occurs under the relevant provisions⁵ of Article 3.⁶

A bank's midnight deadline is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.⁷ If the drawee bank does not return the check or give notice of dishonor or nonpayment within the midnight deadline, the settlement becomes final payment of the check.⁸ Thus, no dishonor occurs regardless of whether the drawee bank retains the check indefinitely or for some reason returns the check after its midnight deadline.⁹

Observation:

As amended in 2002, the relevant provision of Article 4¹⁰ provides that the payor bank can revoke and recover a settlement if it returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement. This change is designed to facilitate electronic check-processing by authorizing the payor bank to return an image of the item instead of the actual item.¹¹

A situation may arise when the drawee bank does not settle for the check when it is received.¹² If the drawee bank is not also the depositary bank and retains the check without settling for it beyond midnight of the day it is presented for payment, the bank at that point becomes “accountable” for the amount of the check, that is, it is obliged to pay the amount of the check.¹³ If the drawee bank is also the depositary bank, the bank becomes accountable for the amount of the check if the bank does not pay the check, return it, or send notice of dishonor by its midnight deadline.¹⁴ In all cases in which the drawee bank becomes accountable under Article 4 of the Uniform Commercial Code,¹⁵ the check has not been paid (either by a settlement that became unrecoverable or otherwise) and thus is dishonored.¹⁶

Comment:

The provision governing dishonor of checks duly presented for payment to the payor bank otherwise than for immediate payment over the counter¹⁷ reflects the view that a person presenting a check is entitled to payment, not just the ability to hold the drawee accountable under the relevant provision of Article 5.¹⁸ If that payment is not made in a timely manner, the check is dishonored.¹⁹

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Footnotes

- ¹ U.C.C. § 4-301[Rev]; U.C.C. § 4-302[Rev].
- ² U.C.C. § 3-502(b)(1)[Rev].
As to notice of dishonor, see §§ 317 to 328.
- ³ U.C.C. § 3-502(b)(1)[Rev].
- ⁴ U.C.C. § 3-502[Rev] Official Comment 4.
- ⁵ U.C.C. § 3-502(b)(1)[Rev].
- ⁶ U.C.C. § 3-502[Rev] Official Comment 4.
- ⁷ U.C.C. § 4-104(10)[Rev].
- ⁸ U.C.C. § 3-502[Rev] Official Comment 4, citing U.C.C. § 4-215[Rev].
- ⁹ U.C.C. § 3-502[Rev] Official Comment 4.
- ¹⁰ U.C.C. § 4-301(a)(2)[Rev].
- ¹¹ U.C.C. § 4-301(a)(2)[Rev] Official Comment 8.

¹² U.C.C. § 3-502[Rev] Official Comment 4.

¹³ U.C.C. § 3-502[Rev] Official Comment 4, citing U.C.C. § 4-302[Rev].

¹⁴ U.C.C. § 3-502[Rev] Official Comment 4, citing U.C.C. § 4-302[Rev].

¹⁵ U.C.C. § 4-302[Rev].

¹⁶ U.C.C. § 3-502[Rev] Official Comment 4, citing U.C.C. § 3-502(b)(1)[Rev].

¹⁷ U.C.C. § 3-502(b)(1)[Rev].

¹⁸ U.C.C. § 3-502[Rev] Official Comment 4.

¹⁹ U.C.C. § 3-502[Rev] Official Comment 4.

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1. Dishonor

d. Acts Not Constituting Dishonor

§ 315. Acts not constituting dishonor of negotiable instrument, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  411.1

Certain acts do not constitute dishonor under Article 3 of the Uniform Commercial Code, such as where the party to whom presentment is made returns an instrument for lack of a necessary indorsement, or refuses payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.¹ The refusal to certify a check is also not dishonor.²

In addition, payment or acceptance of an unaccepted documentary draft may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance would be required if the draft were not a documentary draft.³

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Footnotes

¹ § 292.

² U.C.C. § 3-409(d)[Rev].
A bank's action in refusing to issue a counter check to a co-owner of a joint checking account whose name had been removed from the account without her consent did not amount to dishonor. [Wright v. Commercial and Sav. Bank](#), 297 Md. 148, 464 A.2d 1080, 36 U.C.C. Rep. Serv. 1687, 39 A.L.R.4th 1099 (1983).

³ § 298.

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B. Dishonor, Notice of Dishonor, and Protest


1. Dishonor

d. Acts Not Constituting Dishonor

§ 316. Effect of consent to late acceptance of dishonored draft

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  411.1, 416 to 418

If a draft is dishonored because timely acceptance of the draft was not made¹ and the person entitled to demand acceptance consents to a late acceptance, after the late acceptance the draft is treated as never having been dishonored.² In other words, the late acceptance cures the dishonor, and if the draft is subsequently presented for payment and payment is refused, dishonor occurs at that time.³ While this provision has been held to apply only to time items, such as drafts, which have been dishonored by nonacceptance, and not to demand items, such as checks, which have been dishonored by nonpayment,⁴ it has also been held that the reference in the provision to the dishonor of a “draft” by “nonacceptance” includes the dishonor of a check by nonpayment.⁵

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Footnotes

¹ As to the dishonor of unaccepted drafts, generally, see § 312.

² U.C.C. § 3-502(f)[Rev].

³ U.C.C. § 3-502[Rev] Official Comment 8.

⁴ *Blake v. Woodford Bank & Trust Co.*, 555 S.W.2d 589, 21 U.C.C. Rep. Serv. 383 (Ky. Ct. App. 1977) (citing former U.C.C. § 3-511(4) (1952 Rev)); *Sun River Cattle Co., Inc. v. Miners Bank of Montana N.A.*, 164 Mont. 237, 521 P.2d 679, 14 U.C.C. Rep. Serv. 1004 (1974), opinion supplemented, 164 Mont. 479, 525 P.2d 19 (1974) (citing former U.C.C. § 3-511(4) (1952 Rev)).

- ⁵ [Leaderbrand v. Central State Bank of Wichita](#), 202 Kan. 450, 450 P.2d 1, 6 U.C.C. Rep. Serv. 172 (1969) (rejected by, [Sun River Cattle Co., Inc. v. Miners Bank of Montana N.A.](#), 164 Mont. 237, 521 P.2d 679, 14 U.C.C. Rep. Serv. 1004 (1974)) and (rejected by, [Blake v. Woodford Bank & Trust Co.](#), 555 S.W.2d 589, 21 U.C.C. Rep. Serv. 383 (Ky. Ct. App. 1977)) (citing former U.C.C. § 3-511(4) (1952 Rev)).

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2. Notice of Dishonor

a. In General

§ 317. When notice of dishonor of negotiable instrument required

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Forms

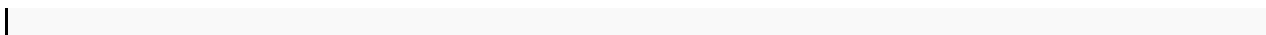
Forms relating to notice of dishonor, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments
[\[Westlaw®\(r\) Search Query\]](#)

Unless excused, notice of dishonor, must be given:

- (1) to the drawer of an instrument in order to enforce the drawer's obligation to pay a dishonored draft accepted by an acceptor other than a bank.¹
- (2) to an indorser of a negotiable instrument² in order to enforce that indorser's obligation on dishonor of the instrument.³

Observation:

Notice of dishonor is not relevant to the liability of a drawer under Article 3 of the Uniform Commercial Code except for the case of a draft accepted by an acceptor other than a bank.⁴ However, a jurisdiction's bad check statute, imposing penalties or civil liability for issuing a worthless checks, may require a notice of dishonor be sent to the drawer.⁵ The purpose of such a statutory notice of dishonor requirement is to ensure that the drawer knows that the check has been dishonored and that he or she might be subject to various statutory penalties, criminal liability and civil liability unless he or she pays the check.⁶



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Footnotes

¹ U.C.C. § 3-503(a)[Rev].

² U.C.C. § 3-503(a)[Rev].

³ § 318.

⁴ U.C.C. § 3-503[Rev] Official Comment 1.

⁵ Metro Milwaukee Auto Auction v. Coulson, 604 N.W.2d 111 (Minn. Ct. App. 2000).

⁶ Metro Milwaukee Auto Auction v. Coulson, 604 N.W.2d 111 (Minn. Ct. App. 2000).

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2. Notice of Dishonor

a. In General

§ 318. Notice of dishonor of negotiable instrument to enforce obligation of indorser

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  411.1

Forms

Forms relating to denying receipt of notice, see Am. Jur. Legal Forms 2d, Uniform Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Unless notice was excused¹ Article 3 of the Uniform Commercial Code requires that notice of dishonor of a negotiable instrument must be given to an indorser² in order to enforce the indorser's obligation on dishonor of the instrument.³ If notice of dishonor of an instrument not given to an indorser when required, the liability of the indorser to pay upon dishonor⁴ is discharged.⁵

The mere fact that the indorser of corporate paper is a stockholder, officer, or director of a corporation does not release the holder of an instrument from the obligation of giving notice of dishonor in order to charge the indorser.⁶ However, the requirement that a holder give an indorser notice of the maker's dishonor may be entirely excused⁷ or unnecessary,⁸ if the indorser is a corporate official of the maker who received a demand for payment by the maker and confirmed that the maker did not have funds to make the payment⁹ or knows personally that payment will not be made by the corporation.¹⁰

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Footnotes

1 § 327.

2 § 317.

3 U.C.C. § 3-503(a)[Rev].

4 U.C.C. § 3-415(a)[Rev].

5 U.C.C. § 3-415(c)[Rev].

As to the liability of an indorser, see §§ 409 to 419.

6 Shenkin v. Grant, 3 Misc. 2d 333, 152 N.Y.S.2d 996 (Sup 1956).

7 Fred Shearer & Sons, Inc. v. Prendergast, 152 Or. App. 657, 955 P.2d 324, 35 U.C.C. Rep. Serv. 2d 196 (1998).

8 Makel Textiles, Inc. v. Dolly Originals, Inc., 4 U.C.C. Rep. Serv. 95 (N.Y. Sup 1967).

9 Fred Shearer & Sons, Inc. v. Prendergast, 152 Or. App. 657, 955 P.2d 324, 35 U.C.C. Rep. Serv. 2d 196 (1998).

10 Makel Textiles, Inc. v. Dolly Originals, Inc., 4 U.C.C. Rep. Serv. 95 (N.Y. Sup 1967).

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2. Notice of Dishonor

a. In General

§ 319. Persons by whom notice of dishonor of negotiable instrument may be given

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  413

Notice of dishonor under Article 3 of the Uniform Commercial Code may be given by any person.¹ There is no requirement that the person giving the notice be a party to the dishonored instrument or the authorized agent of a party.² Notice given to an indorser by one party operates for the benefit of any party who has rights on the instrument against the notified indorser.³

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Footnotes

¹ U.C.C. § 3-503(b)[Rev].

² Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-503:4 (3d ed.).

³ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-503:4 (3d ed.).

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2. Notice of Dishonor

b. Time for Giving Notice of Dishonor

§ 320. Time for giving notice of dishonor of negotiable instrument, generally

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  416

Except for notice given by banks,¹ notice of dishonor must be given within 30 days following the day on which dishonor occurred.² The giving of notice within the prescribed time is mandatory,³ unless compliance has been excused.⁴

Observation:

Under the Uniform Commercial Code generally, a person notifies or gives a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course,⁵ whether or not the other person actually comes to know of it.⁶ Under this provision, the word “notifies” is used when the essential fact is the proper dispatch of the notice, not its receipt.⁷ When the essential fact is the other party’s receipt of the notice, that is stated.⁸ Since written notice is deemed to be given when sent, the notice must merely be mailed by the 30th day.⁹

Footnotes

¹ § 321.

2 U.C.C. § 3-503(c)[Rev].

3 Standard Premium Plan Corp. v. Wolf, 56 Misc. 2d 522, 288 N.Y.S.2d 987, 5 U.C.C. Rep. Serv. 161 (N.Y. City Civ.
Ct. 1968) (under former U.C.C. § 3-508(2) (1952 Rev)).
Article 3 is clear that notice of dishonor of an instrument must be given within the specific time limits of dishonor in
order to charge any secondary party with liability thereon. Clements v. Central Bank of Georgia, 155 Ga. App. 27, 270
S.E.2d 194, 29 U.C.C. Rep. Serv. 1536 (1980).

4 § 322.

5 § 323.

6 U.C.C. § 1-202(d)[Rev].

7 U.C.C. § 1-202(d)[Rev] Official Comment 2.

8 U.C.C. § 1-202(d)[Rev] Official Comment 2.

9 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-503:7 (3d ed.).

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2. Notice of Dishonor

b. Time for Giving Notice of Dishonor

§ 321. Time for giving notice of dishonor of negotiable instrument with respect to items taken for collection

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[Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10](#)

[Duties of collecting bank with respect to presenting draft or bill of exchange for acceptance, 39 A.L.R.2d 1296](#)

When an instrument is taken for collection by a collecting bank, the time for giving notice of dishonor is stated in terms of whether it is given by the collecting bank or by any other person.¹ Unless excused, notice of dishonor with respect to an instrument taken for collection by a collecting bank must be given:²

(1) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or

(2) by any other person within 30 days following the day on which the person receives notice of dishonor.

Thus, when a check is presented for payment on Friday and the next banking day is Monday, the bank has until the midnight deadline of Monday in which to give notice of dishonor.³ Further, where a collecting bank receives telephonic notice of dishonor from the payor bank on a particular day, but waits until the midnight deadline of the banking day following the banking day when it first receives written notice of dishonor (one week later) before notifying its customer of the dishonor,

the collecting bank fails to give notice as required by Article 3 and is therefore precluded from recovering against its customer.⁴ Where a collecting bank re-presents a dishonored check, it cannot extend the time in which it should have given notice to the secondary party that the check had been initially dishonored.⁵

Observation:

By offering a checking account and by participating in the bank collection process related to the checks it provides and that bore its name, a securities broker-dealer may be a “collecting bank” required to give the timely notice of dishonor.⁶

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Footnotes

- ¹ Frisch, *Lawrence’s Anderson on the Uniform Commercial Code* § 3-503:8 (3d ed.).
- ² U.C.C. § 3-503(c)[Rev].
As to notice of dishonor with respect to checks presented for payment through check collection system, generally, see § 314.
- ³ *Southwest Nat. Bank of Wichita v. ATG Const. Management, Inc.*, 241 Kan. 257, 736 P.2d 894 (1987).
- ⁴ *Wells Fargo Bank v. Hartford Nat. Bank and Trust Co.*, 484 F. Supp. 817, 28 U.C.C. Rep. Serv. 446 (D. Conn. 1980).
As to the manner of giving notice of dishonor, generally, see § 323.
- ⁵ *Clements v. Central Bank of Georgia*, 155 Ga. App. 27, 270 S.E.2d 194, 29 U.C.C. Rep. Serv. 1536 (1980).
- ⁶ *Edward D. Jones & Co. v. Mishler*, 161 Or. App. 544, 983 P.2d 1086, 38 U.C.C. Rep. Serv. 2d 1091 (1999).

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2. Notice of Dishonor

b. Time for Giving Notice of Dishonor

§ 322. Delayed notice of dishonor of negotiable instrument

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Forms

Forms relating to delay, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Although compliance with the time periods prescribed by Article 3 for giving notice of dishonor is mandatory,¹ delay in giving notice may be excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.²

It is not necessary that the cause of the delay make the giving of notice of dishonor impossible.³ All that is necessary is that the circumstances would deter a person of ordinary prudence from performing.⁴ Thus, while the circumstances causing the delay must not be the result of the party's negligence, they may be such as to disable only him or her.⁵

Observation:

In the case of a person engaged in business, "ordinary care" means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged.⁶



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Footnotes

¹ § 320.

² U.C.C. § 3-504(c)[Rev].
Where the delay in notice of dishonor was not due to circumstances beyond the bank's control but was due to the bank's failure to give it once the bank itself had notice of the dishonor and was under an obligation to take action, the delay in notice was not excused and did not prevent the indorser's discharge. [Clements v. Central Bank of Georgia](#), 155 Ga. App. 27, 270 S.E.2d 194, 29 U.C.C. Rep. Serv. 1536 (1980).
As to when notice of dishonor is excused, generally, see § 327.

³ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-504:14 (3d ed.).

⁴ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-504:14 (3d ed.).

⁵ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-504:14 (3d ed.).

⁶ U.C.C. § 3-103(a)(9)[Rev].

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11 Am. Jur. 2d Bills and Notes § 323

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§ 323. Form and manner of giving notice of dishonor of negotiable instrument, generally

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  419 to 421

West's Key Number Digest, [Finance, Banking, and Credit](#)  592, 594

Forms

Forms relating to notice of dishonor, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

The Uniform Commercial Code generally provides that a person notifies or gives a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course.¹ With respect to notice of dishonor, Article 3 further provides that such notice may be given by any commercially reasonable means, including an oral, written, or electronic communication.² The return of an instrument given to a bank for collection is alone sufficient notice of dishonor³ and the Code now recognizes return of checks by electronic means.⁴

Caution:

While oral notice of dishonor is permissible under Article 3, the pertinent provisions of Article 4 dealing with the collection of items by and through banks require that notice be “sent.”⁵ Such provisions have been held to imply the delivery of a written instrument.⁶ Accordingly, since Article 4 provides that it takes precedence over Article 3 where a conflict exists between the two Articles,⁷ some courts have held that oral notice of dishonor by a bank is insufficient, even though authorized by Article 3.⁸ Some

courts, however, have taken the opposite view⁹ and have rejected a rigid requirement of written notice on the basis that is contrary to the principles underlying the Uniform Commercial Code.¹⁰

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Footnotes

¹ U.C.C. § 1-202(d)[Rev].

² U.C.C. § 3-503(b)[Rev].

In an action by a bank to recover funds credited or paid to the defendant following his deposit of a check which was subsequently dishonored, the unrebutted testimony of the bank manager that he called the defendant by telephone on the day following the date on which the bank learned of the dishonor established that effective notice of dishonor was made. *Laurel Bank & Trust Co. v. Sahadi*, 32 Conn. Supp. 172, 345 A.2d 53, 17 U.C.C. Rep. Serv. 1259 (C.P. 1975) (applying former U.C.C. § 3-508(3) (1952 Rev)).

Where an officer of the payor bank talked with an officer of the collecting bank and informed him of the payor bank's intention to dishonor checks and make an offset against the customer's account for obligations due to the payor bank, the payor bank gave proper notice of dishonor. *Security Trust Co. of New York v. First Nat. Bank of Rochester*, 79 Misc. 2d 523, 358 N.Y.S.2d 943, 16 U.C.C. Rep. Serv. 464 (Sup 1974) (applying former U.C.C. § 3-508(3) (1952 Rev)).

³ U.C.C. § 3-503(b)[Rev].

⁴ § 314.

⁵ U.C.C. § 4-212[Rev]; U.C.C. § 4-302[Rev].

⁶ *Los Angeles National Bank v. Bank of Canton*, 31 Cal. App. 4th 726, 37 Cal. Rptr. 2d 389, 25 U.C.C. Rep. Serv. 2d 873 (2d Dist. 1995); *Available Iron & Metal Co. v. First Nat. Bank of Blue Island*, 56 Ill. App. 3d 516, 13 Ill. Dec. 940, 371 N.E.2d 1032, 23 U.C.C. Rep. Serv. 694 (1st Dist. 1977); *Mutual Sav. and Loan v. National Bank of Detroit*, 185 Mich. App. 591, 462 N.W.2d 797, 13 U.C.C. Rep. Serv. 2d 463 (1990).

⁷ U.C.C. § 4-102(1)[Rev].

⁸ *Available Iron & Metal Co. v. First Nat. Bank of Blue Island*, 56 Ill. App. 3d 516, 13 Ill. Dec. 940, 371 N.E.2d 1032, 23 U.C.C. Rep. Serv. 694 (1st Dist. 1977); *Mutual Sav. and Loan v. National Bank of Detroit*, 185 Mich. App. 591, 462 N.W.2d 797, 13 U.C.C. Rep. Serv. 2d 463 (1990); *General Motors Acceptance Corp. v. Bank of Richmondville*, 203 A.D.2d 851, 611 N.Y.S.2d 338, 24 U.C.C. Rep. Serv. 2d 160 (3d Dep't 1994); *Reynolds-Wilson Lumber Co. v. Peoples Nat. Bank*, 1985 OK 32, 699 P.2d 146, 40 U.C.C. Rep. Serv. 1319 (Okla. 1985).

⁹ *Clements v. Central Bank of Georgia*, 155 Ga. App. 27, 270 S.E.2d 194, 29 U.C.C. Rep. Serv. 1536 (1980); *Bank of Commerce v. De Santis*, 114 Misc. 2d 491, 451 N.Y.S.2d 974, 34 U.C.C. Rep. Serv. 1270 (N.Y. City Civ. Ct. 1982).

¹⁰ *Yoder v. Cromwell State Bank*, 478 N.E.2d 131, 41 U.C.C. Rep. Serv. 173 (Ind. Ct. App. 1985).

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  419

Forms

Forms relating to notice of dishonor, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

No specific words are required for a notice of dishonor.¹ A notice of dishonor is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted.² Under this rule, it is not necessary that the notice disclose the name of the holder of the instrument in order to be sufficient.³ While the return of an instrument given to a bank for collection is alone sufficient notice of dishonor,⁴ a receipt given for checks taken for collection is not a sufficient notice of dishonor where the receipt does not indicate that the checks have been dishonored.⁵

Observation:

Since the notice need only “reasonably identify” the recipient, it is not necessary that the description of the dishonored instrument be as complete as possible or that it be free of error.⁶ As long as the notice is not seriously misleading, it will be held that the notice was sufficient to permit enforcement of the liability of the person notified.⁷

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Footnotes

- ¹ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-503:6 (3d ed.).
- ² § 323.
- ³ First Stroudsburg National Bank v. Nixon, 14 U.C.C. Rep. Serv. 748 (Pa. C.P. 1971).
- ⁴ U.C.C. § 3-503(b)[Rev].
- ⁵ Available Iron & Metal Co. v. First Nat. Bank of Blue Island, 56 Ill. App. 3d 516, 13 Ill. Dec. 940, 371 N.E.2d 1032, 23 U.C.C. Rep. Serv. 694 (1st Dist. 1977).
- ⁶ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-503:6 (3d ed.).
- ⁷ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-503:6 (3d ed.).

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§ 325. Place of giving notice of dishonor of negotiable instrument

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Article 3 of the Uniform Commercial Code does not specify where notice of dishonor may be sent, but only provides that notice may be given in any reasonable manner or by any commercially reasonable means.¹ However, the general provisions of Article 1 provide that for any writing or notice to be “sent” in the statutory sense of the term, the writing or notice must be properly addressed.² Nevertheless, the failure to address a notice of dishonor properly may not be fatal, as the term “send” includes any way of causing any record or notice to be received within the time it would have arrived if properly sent.³

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Footnotes

¹ § 323.

² U.C.C. § 1-201(b)(36)(A)[Rev].

³ U.C.C. § 1-201(b)(36)(B)[Rev].

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  498

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[Construction and effect of U.C.C. secs. 4-301 and 4-302 making payor bank accountable for failure to act promptly on item presented for payment, 22 A.L.R.4th 10](#)

Forms

Forms relating to notice of dishonor, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor as stated:

- (1) a document, regular in form, which purports to be a protest.¹
- (2) a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument which states that acceptance or payment has been refused and which sets forth reasons for the refusal that are not inconsistent with dishonor.²
- (3) a book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business, which shows

dishonor, even though there is no evidence of who made the entry.³

Observation:

When evidence in a form other than the three specified above is offered to establish the existence of presentment, dishonor, or notice of dishonor, the other evidence does not give rise to a presumption of dishonor and of any notice of dishonor stated.⁴ Typically, however, the other evidence will support an inference of presentment, dishonor or notice of dishonor.⁵

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Footnotes

- ¹ U.C.C. § 3-505(a)(2)[Rev].
Protest is good evidence of a dishonor since there seldom is reason for a false statement of dishonor in that the person entitled to enforce the instrument would always prefer payment to dishonor. [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:8 \(3d ed.\)](#).
As to protest, generally, see §§ 329 to 332.
- ² U.C.C. § 3-505(a)(2)[Rev].
Under former U.C.C. § 3-510(b) (1952 Rev), the notation "account closed" on a check deposited by a customer of a bank in the customer's account was admissible as primary evidence to establish the fact stated in such notation. [Serve v. First Nat. Bank of Atlanta, 143 Ga. App. 239, 237 S.E.2d 719, 22 U.C.C. Rep. Serv. 1001 \(1977\)](#).
A stamp or writing of a drawee bank on a check or accompanying paper, which stated that acceptance or payment had been refused because there was "no account," was admissible in evidence and created a presumption of dishonor. [State v. Young, 203 Kan. 296, 454 P.2d 724 \(1969\)](#).
- ³ U.C.C. § 3-505(a)(3)[Rev].
Since no limitation is placed on the form of the business record, a computer printout is admissible subject to the usual rules for establishing a predicate or foundation for such evidence. [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 5-505:7 \(3d ed.\)](#).
- ⁴ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:3 \(3d ed.\)](#).
- ⁵ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:3 \(3d ed.\)](#).

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§ 327. Excused notice of dishonor of negotiable instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  411.1, 422(1)

Forms

Forms relating to excused notice of dishonor or nonpayment, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Notice of dishonor is excused if, by the terms of the instrument, notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument,¹ or if notice of dishonor has been waived.²

When the person who is otherwise entitled to notice of dishonor has knowledge of the matter to which the notice relates, such as where such person is an officer or a stockholder of the primary party, notice of dishonor is unnecessary.³

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Footnotes

¹ U.C.C. § 3-504(b)(i)[Rev].

² § 328.

- ³ [A. J. Armstrong Co. v. Janburt Embroidery Corp.](#), 97 N.J. Super. 246, 234 A.2d 737, 4 U.C.C. Rep. Serv. 748 (Law Div. 1967).
Because the defendant indorser of a promissory note knew that the note was not paid and that the maker would not pay it, the defendant had full knowledge of everything that notice of dishonor of the note would have given him; accordingly, notice of dishonor was unnecessary. [Federal Deposit Ins. Corp. v. Kirkland](#), 272 S.C. 310, 251 S.E.2d 750, 26 U.C.C. Rep. Serv. 110 (1979).
As to the persons entitled to notice of dishonor, see [§ 317](#).

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e. Excused Notice; Waiver

§ 328. Waiver of notice of dishonor of negotiable instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  422

A.L.R. Library

When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104(a)(2), 3-108(a, b) of Uniform Commercial Code, 71 A.L.R.5th 443

Forms

Forms relating to excused notice of dishonor or nonpayment, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Notice of dishonor is excused if the party whose obligation is being enforced has waived notice of dishonor.¹ The terms of a note may waive notice of dishonor.² Indeed, the great majority of cases, notice of dishonor is waived with respect to notes.³ A waiver of presentment constitutes a waiver of notice of dishonor.⁴ An indorser, or other party, may also, in the instrument or otherwise, waive notice of dishonor.⁵

There is no requirement that the waiver of notice of dishonor be in writing, or that it be written on the instrument.⁶ Waiver

may be in writing or oral, and need not be supported by consideration.⁷ It may express or implied, and an implied waiver may be found in conduct occurring prior to the time or after the time that notice of dishonor is required.⁸ However, it has been held that waiver of notice of dishonor must be established through clear and satisfactory proof.⁹ For example, a clause in a checking account agreement—which provides that the accountholder remains responsible for any charges to the account—is too general to waive notice of dishonor of third-party checks that the accountholder deposits into his or her checking account.¹⁰

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Footnotes

¹ U.C.C. § 3-504(b)[Rev].

² *Josephthal Holdings, Inc. v. Weisman*, 5 A.D.3d 221, 773 N.Y.S.2d 398 (1st Dep’t 2004).
Even if the a state motor vehicles sales finance act applied to a creditor, which had loaned money to a Chapter 13 debtor’s company in exchange for a first-priority lien against the company’s commercial truck and the debtor’s personal guarantee of the promissory note, the debtor waived her right to a defense of additional notice entitlement, as the note contained an express waiver of any statutory notice, stating that the debtor waived “presentment, notice of dishonor and protest, notice of default by debtor, of sale or other dealing with any security and any other notice of which guarantor might otherwise be entitled,” and that the waiver was valid and enforceable, as neither the parties’ contract nor the waiver violated public policy or was expressly prohibited by statute. *In re Ambrose*, 568 B.R. 716 (Bankr. N.D. Ga. 2017).

³ U.C.C. § 3-502[Rev] Official Comment 2.

⁴ U.C.C. § 3-504(b)[Rev].
As to waivers of presentment, see §§ 305 to 307.

⁵ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-504:13 (3d ed.).

⁶ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-504:13 (3d ed.).

⁷ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-504:13 (3d ed.).

⁸ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-504:13 (3d ed.).

⁹ *Catron v. Citizens Union Bank*, 229 S.W.3d 54, 63 U.C.C. Rep. Serv. 2d 937 (Ky. Ct. App. 2006).

¹⁰ *Edward D. Jones & Co. v. Mishler*, 161 Or. App. 544, 983 P.2d 1086, 38 U.C.C. Rep. Serv. 2d 1091 (1999).

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3. Protest

§ 329. Protest with respect to negotiable instrument, generally

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Forms

Forms relating to protest, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

A protest is a certificate of dishonor¹ made by a United States consul or vice consul, a notary public, or other person authorized to administer oaths by the law of the place where the dishonor occurs.² A protest creates a presumption of dishonor and of any notice of dishonor stated.³

Protest is not mandatory under the current version of Article 3, and must be requested by the holder.⁴ Even if requested, moreover, protest is not a condition to the liability of indorsers or drawers.⁵ Rather, it is a service provided by the banking system to establish that dishonor has occurred and, like other services provided by the banking system, it is available if market incentives, interbank agreements, or governmental regulations require it.⁶ However, protest may be a requirement for liability on international drafts governed by foreign law which Article 3 cannot affect.⁷

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Footnotes

¹ [U.C.C. § 3-505\(b\)\[Rev\]](#).

² § 330.

³ U.C.C. § 3-505(a)(1)[Rev].
As to proof of dishonor and notice of dishonor, generally, see § 326.

⁴ U.C.C. § 3-505[Rev] Official Comment.

⁵ U.C.C. § 3-505[Rev] Official Comment.

⁶ U.C.C. § 3-505[Rev] Official Comment.

⁷ U.C.C. § 3-505[Rev] Official Comment.

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3. Protest

§ 330. Who may make protest with respect to negotiable instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  408.1

Forms

Forms relating to person making or certifying protest, see Am. Jur. Pleading and Practice Forms, Commercial Code
[\[Westlaw®\(r\) Search Query\]](#)

A protest with respect to a negotiable instrument may be made by a United States consul or vice consul, a notary public, or any person authorized to administer oaths¹ by the law of the place where the dishonor occurs.

Although Article 3 does not define the place where dishonor occurs, it is deemed to be the place where presentment, if not excused, was made.²

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Footnotes

¹ [U.C.C. § 3-505\(b\)\[Rev\].](#)

² [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:9 \(3d ed.\).](#)

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§ 331. Basis for protest with respect to negotiable instrument

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A protest with respect to negotiable instrument may be made on information satisfactory to the person making the protest.¹ The Uniform Commercial Code does not define the kind or quantum of evidence that must be presented the person issuing the certificate of dishonor.² Because the Code uses the word “information” instead of “evidence,” there is no requirement, therefore, that the person issuing the certificate of dishonor be presented with information that would satisfy the rules of evidence of any particular jurisdiction.³

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Footnotes

¹ [U.C.C. § 3-505\(b\)\[Rev\].](#)

² [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:10 \(3d ed.\).](#)

³ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:10 \(3d ed.\).](#)

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§ 332. Form and contents of protest with respect to negotiable instrument

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West's Key Number Digest

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A protest with respect to negotiable instrument must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made.¹ The protest may also certify that notice of dishonor has been given to some or all of the parties.² The protest must also certify that the instrument has been dishonored by nonacceptance or nonpayment.³ It must state which form of dishonor has occurred and may not do so in the alternative.⁴

There is no requirement that the protest go beyond stating conclusions and recite the facts on which the conclusions are based.⁵ For example, nothing in Article 3 requires a certification of the time, place, and any other relevant details of the presentment or of the excuse for not presenting the instrument.⁶ Rather, it is sufficient that the person making the protest “certify” to the conclusion that presentment was made or in general terms describe the reason why it was not made.⁷

Observation:

A protest is properly admitted in evidence even though it merely states the fact of dishonor without reciting the factual details.⁸ However, it may be preferable to include a recital as to the time, place, and other details that are relevant, since ordinarily the protest will have greater weight when there are such details to show that the conclusions stated are correct.⁹

Footnotes

¹ U.C.C. § 3-505(b)[Rev].

² U.C.C. § 3-505(b)[Rev].

³ U.C.C. § 3-505(b)[Rev].

⁴ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:11 (3d ed.).

⁵ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:11 (3d ed.).

⁶ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:13 (3d ed.).

⁷ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:13 (3d ed.).

⁸ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:14 (3d ed.).

⁹ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-505:13 (3d ed.).

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IX. Acceptance of Draft

A. In General

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A.L.R. Library

A.L.R. Index, Acceptance

A.L.R. Index, Bills and Notes

A.L.R. Index, Certificates and Certification

A.L.R. Index, Certified Checks

A.L.R. Index, Checks and Drafts

A.L.R. Index, Dishonor

A.L.R. Index, Uniform Commercial Code

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IX. Acceptance of Draft

A. In General

§ 333. Acceptance of draft, generally

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[What constitutes undertaking or instruction to do any act in addition to payment of money as limitation on definition of negotiable instrument under U.C.C. s3-104, 75 A.L.R.5th 559](#)

[Right of bank certifying check or note by mistake to cancel, or avoid effect of, certification, 25 A.L.R.3d 1367](#)

Forms

Forms relating to acceptance of draft, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

An “acceptance” is the drawee’s signed agreement to pay a draft as presented.¹ It must be written on the draft, and may consist of the drawee’s signature alone.²

A certified check is a check accepted by the bank on which it is drawn.³ An acceptance may be made by a writing on a check which indicates that the check is certified.⁴ However, a refusal to certify is not dishonor of the instrument.⁵

A draft may be accepted, even though it has not been signed by the drawer, or is otherwise incomplete,⁶ and despite the fact that it is overdue or has been dishonored.⁷ The fact that the drawer’s signature is missing does not prevent the acceptance of a

draft, because, by accepting it, the acceptor has agreed to pay the face amount of the instrument, and not merely to pay if the drawer fails to do so.⁸

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Footnotes

- ¹ [U.C.C. § 3-409\(a\)](#) (2002 Rev).
By accepting in writing on an instrument, a drawee may agree to honor it as presented; on the other hand, a drawee may reject the instrument, as by stamping a notation of insufficient funds on the check. [Tepper By and Through Michelson v. Citizens Federal Sav. and Loan Ass'n](#), 448 So. 2d 1138, 38 U.C.C. Rep. Serv. 528 (Fla. 3d DCA 1984).
- ² [§ 336](#).
- ³ [U.C.C. § 3-409\(d\)](#) (2002 Rev).
Acceptance of a check is referred to as “certification.” [Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-409:4 \[Rev.\]](#) (3d ed.).
- ⁴ [U.C.C. § 3-409\(d\)](#) (2002 Rev).
The certification of a bank that a check is good is the equivalent to acceptance, in that, a certified check is available to the holder for all the purposes of money. [Cuesta, Rey & Co. v. Newsom](#), 102 Fla. 853, 136 So. 551 (1931).
- ⁵ [U.C.C. § 3-409\(d\)](#) (2002 Rev), discussed at [§ 315](#).
- ⁶ [U.C.C. § 3-409\(b\)](#) (2002 Rev).
- ⁷ [§ 337](#).
- ⁸ [Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-409:13 \[Rev.\]](#) (3d ed.).
As to the discharge of the drawer’s liability upon acceptance, see [§ 334](#).

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IX. Acceptance of Draft

A. In General

§ 334. Necessity and effect of acceptance of draft

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  66, 71, 74

Forms

Forms relating to acceptance of draft, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code
[\[Westlaw®\(r\) Search Query\]](#)

The drawee of a check or other draft, normally, is not liable on the instrument until the drawee accepts it.¹ The provision of the Uniform Commercial Code pertaining to such liability is not preempted by a federal statute providing that an insured out-of-state state bank can conduct any activity that is permissible under the laws of the host state for the host state's banks or national banks;² however, once the drawee varies the terms of the instrument, and a holder nevertheless cashes the check and accepts a lesser sum, the holder no longer has a remedy against the bank under the Uniform Commercial Code.³

Where a drawer draws a draft on itself, the instrument has the effect of a promissory note.⁴ In that situation, acceptance is not necessary to impose liability on the drawer/drawee.⁵

Observation:

The immunity from liability of a drawee who has not accepted the draft is limited to its liability arising under Article 3.⁶ The drawee may be found liable for breach of a contract to accept, or also may become liable to the holder for conversion if the drawee fails to return, upon demand, a draft presented for payment or acceptance.⁷

An acceptor of a draft is obliged to pay the draft:⁸

- (1) According to its terms at the time it was accepted, even though the acceptance states that the draft is payable “as originally drawn” or equivalent terms.
 - (2) If the acceptance varies the terms of the draft, according to the terms of the draft as varied.
 - (3) If the acceptance is of a draft that is an incomplete instrument, according to its terms as completed to the extent stated in the provisions of the Uniform Commercial Code governing incomplete instruments and the alteration of instruments.
- The drawer is discharged when a draft is accepted by a bank, regardless of when or by whom the acceptance is obtained.⁹ The current version of the Code changed the rule of the earlier version that the drawer is discharged only if the holder obtains acceptance.¹⁰

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Footnotes

- ¹ U.C.C. § 3-408 (2002 Rev).
- ² 12 U.S.C.A. § 1831a(j)(2).
- ³ *Braham v. Branch Banking and Trust Co.*, 170 So. 3d 844, 87 U.C.C. Rep. Serv. 2d 18 (Fla. 5th DCA 2015) (if the holder of the check disagrees with the varied terms, the holder’s alternative to acquiescence is to treat the conditional acceptance as “dishonored,” in which case the drawee bank has the right to revoke its acceptance).
- ⁴ *First Nat. Bank of Denham Springs v. South Carolina Ins. Co.*, 432 So. 2d 417, 36 U.C.C. Rep. Serv. 876 (La. Ct. App. 1st Cir. 1983); *Friendly Nat. Bank of Southwest Oklahoma City v. Farmers Ins. Group*, 1981 OK 63, 630 P.2d 318, 31 U.C.C. Rep. Serv. 1634 (Okla. 1981).
A cashier’s check is a draft drawn on a bank and is deemed to have been accepted in advance by the mere fact of its issuance. *Taboada v. Bank of Babylon*, 95 Misc. 2d 1000, 408 N.Y.S.2d 734, 25 U.C.C. Rep. Serv. 196 (Dist. Ct. 1978).
- ⁵ *Canal Ins. Co. v. First Nat. Bank of Ft. Smith*, 266 Ark. 1044, 596 S.W.2d 710, 27 U.C.C. Rep. Serv. 730 (Ct. App. 1979), decision aff’d, 268 Ark. 356, 596 S.W.2d 709, 28 U.C.C. Rep. Serv. 1063 (1980).
As to the liability of an acceptor, generally, see §§ 398, 399.
- ⁶ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-408:5 [Rev.] (3d ed.).
- ⁷ Frisch, Lawrence’s Anderson on the Uniform Commercial Code § 3-408:5 [Rev.] (3d ed.).
- ⁸ U.C.C. § 3-413(a) (2002 Rev), referring to U.C.C. § 3-115 (2002 Rev) (incomplete instruments) and U.C.C. § 3-407 (2002 Rev) (alteration of instruments).
As to an acceptance varying the terms of a draft, see §§ 339, 340.
- ⁹ U.C.C. § 3-414(c) (2002 Rev).
- ¹⁰ U.C.C. § 3-414 (2002 Rev), Official Comment 3.

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IX. Acceptance of Draft

A. In General

§ 335. Warranties upon acceptance of a draft

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  77 to 80

A person who obtains payment or acceptance of an instrument warrants, at the time of presentment, that:¹

- (1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
- (2) the draft has not been altered;
- (3) he or she has no knowledge that the signature of the drawer of the draft is unauthorized;
- (4) with respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

This provision discusses the liability of parties and presentment warranties; it does not address the wrongful recovery of funds obtained by a fraudulent endorsement. Instead, the section addresses the applicable warranties of a payee and its responsibilities if those warranties are breached.²

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¹ [U.C.C. § 3-417\(a\)](#) (2002 Rev).
As to warranties of transferors of instruments, see [§ 475](#).

² [Paige v. Wells Fargo and Company](#), 228 So. 3d 958, 93 U.C.C. Rep. Serv. 2d 1171 (Miss. Ct. App. 2017), referring to Mississippi's statutory adoption of [U.C.C. § 3-417](#) (2002 Rev).

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IX. Acceptance of Draft

A. In General

§ 336. Form of acceptance of draft; necessity of writing on draft

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  68 to 70

The drawee's agreement to pay the draft as presented must be:¹

- written
- on the draft and
- signed

An acceptance may consist of the drawee's signature alone.² Customarily, the signature of an acceptor is written vertically across the face of the instrument.³ However, since the drawee has no reason to sign, for any other purpose, a signature in any other place, even on the back of the instrument, is sufficient.⁴

In addition to signing the draft, the drawee may add the word "accepted" or "certified" above its signature, or any other words manifesting or consistent with an intent to accept the draft.⁵ Ordinarily the drawee bank will write or stamp the word "certified" on the check followed by the signature of an officer signing in a representative capacity. The drawee bank may also use the word "accepted."⁶ However, the drawee's signature need not be accompanied by such words as "Accepted," "Certified," or "Good."⁷ By definition, however, any additional words must not manifest an intent contrary to or inconsistent with an acceptance,⁸ or indicate an intent to refuse to honor the draft.⁹

Observation:

The statutory requirement that an acceptance be written bars the possibility of an oral, electronic, or telephonic acceptance.¹⁰ Thus, a drawee bank which orally informs the payee that there are sufficient funds in the drawer's account to pay a check does not thereby accept the instrument.¹¹ Likewise, the requirement that the acceptance be written on the instrument bars an acceptance in a collateral writing or letter.¹² However, while purported acceptances that are not written on the instrument have no effect under Article 3, they may be binding agreements under general contract law.¹³

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- ¹ U.C.C. § 3-409(a) (2002 Rev).
To constitute an “acceptance,” the acceptance of draft must be: in writing on the instrument itself and signed. [Messing v. Bank of America, N.A.](#), 143 Md. App. 1, 792 A.2d 312, 47 U.C.C. Rep. Serv. 2d 301 (2002), judgment aff’d, 373 Md. 672, 821 A.2d 22, 50 U.C.C. Rep. Serv. 2d 1 (2003) (adding also that the acceptance must be delivered to the holder or the holder notified).
- ² U.C.C. § 3-409(a) (2002 Rev).
- ³ U.C.C. § 3-409 (2002 Rev), Official Comment 2.
- ⁴ U.C.C. § 3-409 (2002 Rev), Official Comment 2.
- ⁵ Frisch, [Lawrence’s Anderson on the Uniform Commercial Code § 3-409:4 \[Rev.\]](#) (3d ed.)
The evidence shows that a bank had accepted a check, where an officer of the bank orally assured the payee that the drawer’s account contained sufficient funds and signed the check below the drawer’s signature. [Greyhound Lines, Inc. v. First State Bank of Rollingstone](#), 366 N.W.2d 354, 40 U.C.C. Rep. Serv. 1757 (Minn. Ct. App. 1985).
- ⁶ Frisch, [Lawrence’s Anderson on the Uniform Commercial Code § 3-409:11 \[Rev.\]](#) (3d ed.).
- ⁷ U.C.C. § 3-409 (2002 Rev), Official Comment 2.
- ⁸ Frisch, [Lawrence’s Anderson on the Uniform Commercial Code § 3-409:4 \[Rev.\]](#) (3d ed.).
- ⁹ U.C.C. § 3-409 (2002 Rev), Official Comment 2.
- ¹⁰ Frisch, [Lawrence’s Anderson on the Uniform Commercial Code § 3-409:6 \[Rev.\]](#) (3d ed.).
- ¹¹ [Groos Nat. Bank v. Shaw’s of San Antonio, Inc.](#), 555 S.W.2d 492, 22 U.C.C. Rep. Serv. 996 (Tex. Civ. App. San Antonio 1977), writ refused n.r.e., (Jan. 18, 1978) (holding that even though the drawee later refuses to accept the check due to insufficient funds, the bank is not liable to the payee).
- ¹² Frisch, [Lawrence’s Anderson on the Uniform Commercial Code § 3-409:6 \[Rev.\]](#) (3d ed.).
- ¹³ Frisch, [Lawrence’s Anderson on the Uniform Commercial Code § 3-409:6 \[Rev.\]](#) (3d ed.).

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IX. Acceptance of Draft

B. Time of Acceptance; Effective Date

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IX. Acceptance of Draft

B. Time of Acceptance; Effective Date

§ 337. Time of acceptance of draft, generally

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  67, 74

Acceptance may be made at any time.¹ A draft may be accepted even though it is already overdue or has been dishonored.² An acceptance becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.³ An acceptance, therefore, becomes effective when the drawee, as the acceptor, takes either of two specified steps:⁴

- (1) delivers the instrument to someone with the intent that his or her acceptance be effective; or
- (2) acting in accordance with instructions already given, notifies the person designated by those instructions that the draft has been accepted.

Comment:

The Uniform Commercial Code states the generally recognized rule that an acceptance written on the draft takes effect when the drawee notifies the holder or gives notice according to instructions.⁵

Footnotes

¹ U.C.C. § 3-409(a) (2002 Rev).

² U.C.C. § 3-409(b) (2002 Rev).

³ U.C.C. § 3-409(a) (2002 Rev).

⁴ Frisch, Lawrence's *Anderson on the Uniform Commercial Code* § 3-409:9 [Rev.] (3d ed.).
To constitute an "acceptance," the acceptance of draft must be delivered to the holder or the holder notified. *Messing v. Bank of America, N.A.*, 143 Md. App. 1, 792 A.2d 312, 47 U.C.C. Rep. Serv. 2d 301 (2002), judgment aff'd, 373 Md. 672, 821 A.2d 22, 50 U.C.C. Rep. Serv. 2d 1 (2003).

⁵ U.C.C. § 3-409 (2002 Rev), Official Comment 2.

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IX. Acceptance of Draft

B. Time of Acceptance; Effective Date

§ 338. Right of holder of draft to supply date of acceptance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.¹ Thus, unless the acceptor writes in a different date, the holder is authorized to complete the acceptance according to the terms of the draft by supplying a date of acceptance.²

Comment:

The purpose of the provision of the Uniform Commercial Code on acceptance of drafts is to provide a definite date of payment if none appears on the instrument.³ For example, an undated acceptance of a draft payable “thirty days after sight” is incomplete.⁴ Any date of acceptance supplied by the holder is effective if made in good faith.⁵

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Footnotes

¹ [U.C.C. § 3-409\(c\)](#) (2002 Rev).

² [U.C.C. § 3-409](#) (2002 Rev), Official Comment 3.

Where the drawee of a draft payable 160 days after sight fails to note the date of written acceptance, and the draft is sent to the “collect-through” bank specified on the draft which acknowledges receipt on a particular date, the payee of the draft is entitled to complete the drawee’s acceptance by supplying that particular date as the date of presentment.

Clawson v. Berklund, 188 Mont. 48, 610 P.2d 1168, 28 U.C.C. Rep. Serv. 1407 (1980).

³ U.C.C. § 3-409 (2002 Rev), Official Comment 3.

⁴ U.C.C. § 3-409 (2002 Rev), Official Comment 3.

⁵ U.C.C. § 3-409 (2002 Rev), Official Comment 3.

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IX. Acceptance of Draft

C. Acceptance Varying Draft

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IX. Acceptance of Draft

C. Acceptance Varying Draft

§ 339. Acceptance varying draft, generally

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West's Key Number Digest

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Forms

Forms relating to acceptance varying draft, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

A draft-varying acceptance, in effect is a counteroffer by the drawee.¹ That is, the drawee is refusing to accept the draft as tendered while indicating its willingness to accept the draft if the terms of its liability are changed.² If the acceptance varies the terms of the draft, the acceptor is obliged to pay the draft according to the terms of the draft as varied.³

If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored, in which case the drawee may cancel the acceptance.⁴ However, the terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.⁵

Observation:

If the holder receives the draft with the varying acceptance written on it and makes no express protest and refusal, the holder's silence should constitute an assent to the draft-varying acceptance.⁶ Further, the fact that the Uniform Commercial Code speaks of the holder's "assent," in the same sentence that the Code requires that other parties "expressly assent," may indicate a legislative intent that the silence of the holder may constitute its assent to the draft-varying acceptance.⁷

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Footnotes

- ¹ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-410:3 [Rev.] (3d ed.).
- ² Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-410:3 [Rev.] (3d ed.).
- ³ § 334.
- ⁴ U.C.C. § 3-410(a) (2002 Rev).
- ⁵ U.C.C. § 3-410(b) (2002 Rev).
- ⁶ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-410:5 [Rev.] (3d ed.).
- ⁷ Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-410:5 [Rev.] (3d ed.).

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IX. Acceptance of Draft

C. Acceptance Varying Draft

§ 340. Effect of acceptance varying terms of draft on liability of drawer and indorsers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Forms

Forms relating to acceptance varying draft, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser who does not expressly assent to the acceptance is discharged.¹ In other words, the assent of the drawer or indorser must be affirmatively expressed.² The silence of parties to the instrument other than the holder cannot constitute an assent to a draft-varying acceptance.³ Thus, a mere failure to object within a reasonable time is not assent which will prevent discharge.⁴

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Footnotes

¹ [U.C.C. § 3-410\(c\)](#) (2002 Rev).

² [U.C.C. § 3-410](#) (2002 Rev), Official Comment 1.

³ [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-410:6 \[Rev.\]](#) (3d ed.).
As to the silence of the holder with respect to a draft-varying acceptance, see [§ 339](#).

⁴ [U.C.C. § 3-410](#) (2002 Rev), Official Comment 1.

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IX. Acceptance of Draft

D. Revocation of Acceptance

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IX. Acceptance of Draft

D. Revocation of Acceptance

§ 341. Revocation of acceptance of draft, generally

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[Payee's and Drawer's Right of Recovery, in Conversion Under Pre-1990 U.C.C. s3-419, or Post-1990 U.C.C. s3-420 \[Rev\], for Money Paid on Unauthorized Indorsement, 91 A.L.R.5th 89](#)

[Right of bank certifying check or note by mistake to cancel, or avoid effect of, certification, 25 A.L.R.3d 1367](#)

The drawee may revoke the acceptance, if the drawee of a draft accepts the draft in the mistaken belief that:¹

(1) that payment of the draft had not been stopped² or

(2) that the signature of the drawer of the draft was authorized.

The right of a drawee to revoke its acceptance for such reasons is not affected by the failure of the drawee to exercise ordinary care in accepting the draft.³

If an instrument has been accepted by mistake and the case does not come within either of the two situations referred to above, the person accepting, generally may, to the extent permitted by the law governing mistake and restitution, revoke the acceptance.⁴ However, the remedies available in the case of an acceptance by mistake may not be asserted against a person who took the instrument in good faith and for value or who, in good faith, changed position in reliance on the acceptance.⁵

Comment:

Under the former version of the Uniform Commercial Code, the remedy of a drawee that paid or accepted a draft by mistake was also based on the law of mistake and restitution, but that remedy was not specifically stated.⁶ By contrast, the current version of the Code specifically allows restitution in the two most common cases in which the problem is presented: payment or acceptance of forged checks and checks on which the drawer has stopped payment.⁷ However, because the drawee loses the remedy if the person receiving acceptance was a person who took the check in good faith and for value or who, in good faith, changed position in reliance on the acceptance, the drawee in most cases will not have a remedy against the person presenting the check in the two cases expressly covered by the statute.⁸

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Footnotes

- ¹ U.C.C. § 3-418(a) (2002 Rev).
- ² As to the code provision allowing stopping payment orders, see § 406.
- ³ U.C.C. § 3-418(a) (2002 Rev).
- ⁴ U.C.C. § 3-418(b) (2002 Rev).
- ⁵ U.C.C. § 3-418(c) (2002 Rev).
- ⁶ U.C.C. § 3-418 (2002 Rev), Official Comment 1.
- ⁷ U.C.C. § 3-418 (2002 Rev), Official Comment 1.
- ⁸ U.C.C. § 3-418 (2002 Rev), Official Comment 1.

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11 Am. Jur. 2d Bills and Notes § 342

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Bills and Notes

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IX. Acceptance of Draft

D. Revocation of Acceptance

§ 342. Effect of revocation of acceptance of a draft

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  72

If an instrument is accepted by mistake and the acceptor revokes the acceptance, the instrument is deemed not to have been accepted and is treated as dishonored.¹ In that event, the adversely affected person may enforce the instrument, as if the instrument had been dishonored upon presentment.²

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Footnotes

¹ [U.C.C. § 3-418\(d\)](#) (2002 Rev).
As to notice of dishonor of instruments, see §§ [317](#) to [328](#).

² [Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-418:9 \[Rev.\]](#) (3d ed.).

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